

Subsec. (c)(2)(B). Pub. L. 91-172, § 401(d)(2), substituted “5 or fewer persons who are individuals, estates, or trusts (referred to in this subparagraph as ‘common owners’) own” for “a person who is an individual, estate, or trust (referred to in this paragraph as ‘common owner’) owns” and in cl. (ii), substituted “any of such common owners”, “any of the common owners” for “such common owner” and “the common owner”, respectively and added cl. (iii).

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 900(c), Oct. 22, 2004, 118 Stat. 1650, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 1018(s)(3)(B) of Pub. L. 100-647 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99-514, set out as a note under section 831 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91-172, set out as a note under section 1561 of this title.

#### EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88-272, set out as an Effective Date of 1964 Amendment note under section 1551 of this title.

### [§ 1564. Repealed. Pub. L. 101-508, title XI, § 11801(a)(38), Nov. 5, 1990, 104 Stat. 1388-521]

Section, added Pub. L. 91-172, title IV, § 401(b)(1), Dec. 30, 1969, 83 Stat. 600; amended Pub. L. 94-455, title XIX, §§ 1901(b)(1)(J)(vi), (21)(A)(ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1791, 1797, 1834, related to transitional rules in the case of certain controlled corporations.

#### SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

## Subtitle B—Estate and Gift Taxes

Chapter	Sec. <sup>1</sup>
11. Estate tax .....	2001
12. Gift tax .....	2501
13. Tax on generation-skipping transfers ...	2601
14. Special valuation rules .....	2701

<sup>1</sup> Section numbers editorially supplied.

#### AMENDMENTS

1990—Pub. L. 101-508, title XI, § 11602(c), Nov. 5, 1990, 104 Stat. 1388-500, added item for chapter 14.

1986—Pub. L. 99-514, title XIV, § 1431(b), Oct. 22, 1986, 100 Stat. 2729, struck out “certain” after “Tax on” in item for chapter 13.

1976—Pub. L. 94-455, title XX, § 2006(b)(1), Oct. 4, 1976, 90 Stat. 1888, added item for chapter 13.

## CHAPTER 11—ESTATE TAX

Subchapter	Sec. <sup>1</sup>
A. Estates of citizens or residents .....	2001
B. Estates of nonresidents not citizens .....	2101
C. Miscellaneous .....	2201

### Subchapter A—Estates of Citizens or Residents

Part	
I. Tax imposed.	
II. Credits against tax.	
III. Gross estate.	
IV. Taxable estate.	

#### PART I—TAX IMPOSED

Sec.	
2001.	Imposition and rate of tax.
2002.	Liability for payment.

#### AMENDMENTS

1976—Pub. L. 94-455, title XX, § 2001(c)(1)(N)(i), Oct. 4, 1976, 90 Stat. 1853, substituted “Imposition and rate of tax” for “Rate of tax” in item 2001.

### § 2001. Imposition and rate of tax

#### (a) Imposition

A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

#### (b) Computation of tax

The tax imposed by this section shall be the amount equal to the excess (if any) of—

(1) a tentative tax computed under subsection (c) on the sum of—

(A) the amount of the taxable estate, and  
(B) the amount of the adjusted taxable gifts, over

(2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the provisions of subsection (c) (as in effect at the decedent’s death) had been applicable at the time of such gifts.

For purposes of paragraph (1)(B), the term “adjusted taxable gifts” means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

#### (c) Rate schedule

##### (1) In general

If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over \$10,000 .....	18 percent of such amount.
Over \$10,000 but not over \$20,000.	\$1,800, plus 20 percent of the excess of such amount over \$10,000.

<sup>1</sup> Section numbers editorially supplied.

**If the amount with respect to which the tentative tax to be computed is:****The tentative tax is:**

Over \$20,000 but not over \$40,000.	\$3,800, plus 22 percent of the excess of such amount over \$20,000.
Over \$40,000 but not over \$60,000.	\$8,200 plus 24 percent of the excess of such amount over \$40,000.
Over \$60,000 but not over \$80,000.	\$13,000, plus 26 percent of the excess of such amount over \$60,000.
Over \$80,000 but not over \$100,000.	\$18,200, plus 28 percent of the excess of such amount over \$80,000.
Over \$100,000 but not over \$150,000.	\$23,800, plus 30 percent of the excess of such amount over \$100,000.
Over \$150,000 but not over \$250,000.	\$38,800, plus 32 percent of the excess of such amount over \$150,000.
Over \$250,000 but not over \$500,000.	\$70,800, plus 34 percent of the excess of such amount over \$250,000.
Over \$500,000 but not over \$750,000.	\$155,800, plus 37 percent of the excess of such amount over \$500,000.
Over \$750,000 but not over \$1,000,000.	\$248,300, plus 39 percent of the excess of such amount over \$750,000.
Over \$1,000,000 but not over \$1,250,000.	\$345,800, plus 41 percent of the excess of such amount over \$1,000,000.
Over \$1,250,000 but not over \$1,500,000.	\$448,300, plus 43 percent of the excess of such amount over \$1,250,000.
Over \$1,500,000 but not over \$2,000,000.	\$555,800, plus 45 percent of the excess of such amount over \$1,500,000.
Over \$2,000,000 but not over \$2,500,000.	\$780,800, plus 49 percent of the excess of such amount over \$2,000,000.
Over \$2,500,000 .....	\$1,025,800, plus 50% of the excess over \$2,500,000.

**(2) Phasedown of maximum rate of tax****(A) In general**

In the case of estates of decedents dying, and gifts made, in calendar years after 2002 and before 2010, the tentative tax under this subsection shall be determined by using a table prescribed by the Secretary (in lieu of using the table contained in paragraph (1)) which is the same as such table; except that—

- (i) the maximum rate of tax for any calendar year shall be determined in the table under subparagraph (B), and
- (ii) the brackets and the amounts setting forth the tax shall be adjusted to the extent necessary to reflect the adjustments under subparagraph (A).

**(B) Maximum rate**

<b>In calendar year:</b>	<b>The maximum rate is:</b>
2003 .....	49 percent
2004 .....	48 percent
2005 .....	47 percent
2006 .....	46 percent
2007, 2008, and 2009 .....	45 percent.

**(d) Adjustment for gift tax paid by spouse**

For purposes of subsection (b)(2), if—

(1) the decedent was the donor of any gift one-half of which was considered under section 2513 as made by the decedent's spouse, and

(2) the amount of such gift is includible in the gross estate of the decedent,

any tax payable by the spouse under chapter 12 on such gift (as determined under section 2012(d)) shall be treated as a tax payable with respect to a gift made by the decedent.

**(e) Coordination of sections 2513 and 2035**

If—

(1) the decedent's spouse was the donor of any gift one-half of which was considered under section 2513 as made by the decedent, and

(2) the amount of such gift is includible in the gross estate of the decedent's spouse by reason of section 2035,

such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent's spouse with respect to such gift.

**(f) Valuation of gifts****(1) In general**

If the time has expired under section 6501 within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on—

(A) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

(B) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined for purposes of chapter 12.

**(2) Final determination**

For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if—

(A) the value is shown on a return under such chapter and such value is not contested by the Secretary before the expiration of the time referred to in paragraph (1) with respect to such return;

(B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the taxpayer; or

(C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.

For purposes of subparagraph (A), the value of an item shall be treated as shown on a return if the item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(Aug. 16, 1954, ch. 736, 68A Stat. 373; Pub. L. 94-455, title XX, § 2001(a)(1), Oct. 4, 1976, 90 Stat. 1846; Pub. L. 95-600, title VII, § 702(h)(1), Nov. 6,

1978, 92 Stat. 2930; Pub. L. 97-34, title IV, § 402(a)-(c), Aug. 13, 1981, 95 Stat. 300; Pub. L. 98-369, div. A, title I, § 21(a), July 18, 1984, 98 Stat. 506; Pub. L. 100-203, title X, § 10401(a)-(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330-430, 1330-431; Pub. L. 103-66, title XIII, § 13208(a)-(b)(2), Aug. 10, 1993, 107 Stat. 469; Pub. L. 105-34, title V, §§ 501(a)(1)(D), 506(a), Aug. 5, 1997, 111 Stat. 845, 855; Pub. L. 105-206, title VI, § 6007(e)(2)(B), July 22, 1998, 112 Stat. 810; Pub. L. 105-277, div. J, title IV, § 4003(c), Oct. 21, 1998, 112 Stat. 2681-909; Pub. L. 107-16, title V, § 511(a)-(c), June 7, 2001, 115 Stat. 70.)

#### AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

#### AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107-16, §§ 511(a), 901, temporarily substituted in table provisions that if the amount on which the tax is computed is over \$2,500,000, then the tentative tax is \$1,025,800, plus 50% of the excess over \$2,500,000 for provisions that if the amount on which the tax is computed is over \$2,500,000 but not over \$3,000,000, then the tentative tax is \$1,025,800, plus 53% of the excess over \$2,500,000, and if the amount on which the tax is computed is over \$3,000,000, then the tentative tax is \$1,290,800, plus 55% of the excess over \$3,000,000. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2). Pub. L. 107-16, §§ 511(c), 901, temporarily added par. (2). See Effective and Termination Dates of 2001 Amendment note below.

Pub. L. 107-16, §§ 511(b), 901, temporarily struck out heading and text of par. (2). Text read as follows: “The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds \$10,000,000 but does not exceed the amount at which the average tax rate under this section is 55 percent.” See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (f). Pub. L. 105-206, § 6007(e)(2)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If—

“(1) the time has expired within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), and

“(2) the value of such gift is shown on the return for such preceding calendar period or is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such gift,

the value of such gift shall, for purposes of computing the tax under this chapter, be the value of such gift as finally determined for purposes of chapter 12.”

Subsec. (f)(2). Pub. L. 105-277 inserted concluding provisions.

1997—Subsec. (c)(2). Pub. L. 105-34, § 501(a)(1)(D), substituted “the amount at which the average tax rate under this section is 55 percent” for “\$21,040,000”.

Subsec. (f). Pub. L. 105-34, § 506(a), added subsec. (f).

1993—Subsec. (c)(1). Pub. L. 103-66, § 13208(a), substituted in table provisions that if the amount on which the tax is computed is over \$2,500,000 but not over \$3,000,000, then the tentative tax is \$1,025,800, plus 53% of the excess over \$2,500,000 and if the amount on which the tax is computed is over \$3,000,000, then the tentative tax is \$1,290,800, plus 55% of the excess over \$3,000,000 for provisions that if the amount on which the tax is computed is over \$2,500,000, then the tentative tax is \$1,025,800, plus 50% of the excess over \$2,500,000.

Subsec. (c)(2), (3). Pub. L. 103-66, § 13208(b)(1), (2), redesignated par. (3) as (2), struck out “(\$18,340,000 in the

case of decedents dying, and gifts made, after 1992)” after “exceed \$21,040,000”, and struck out former par. (2) which related to the rates of tax on estates under this section for the years 1982 to 1992.

1987—Subsec. (b)(1). Pub. L. 100-203, § 10401(b)(2)(A)(i), substituted “under subsection (c)” for “in accordance with the rate schedule set forth in subsection (c)”.

Subsec. (b)(2). Pub. L. 100-203, § 10401(b)(2)(A)(ii), substituted “the provisions of subsec. (c)” for “the rate schedule set forth in subsection (c)”.

Subsec. (c)(2)(A). Pub. L. 100-203, § 10401(a)(1), substituted “1993” for “1988”.

Subsec. (c)(2)(D). Pub. L. 100-203, § 10401(a)(2), (3), substituted in heading “After 1983 and before 1993” for “For 1984, 1985, 1986, or 1987”, and in text “after 1983 and before 1993” for “in 1984, 1985, 1986, or 1987”.

Subsec. (c)(3). Pub. L. 100-203, § 10401(b)(1), added par. (3).

1984—Subsec. (c)(2)(A), (D). Pub. L. 98-369 substituted “1988” for “1985” in subpar. (A) and substituted “1984, 1985, 1986, or 1987” for “1984” in heading and text of subpar. (D).

1981—Subsec. (b)(2). Pub. L. 97-34, § 402(c), inserted “which would have been” before “payable” and “, if the rate schedule set forth in subsection (c) (as in effect at the decedent’s death) had been applicable at the time of such gifts” after “December 31, 1976,”.

Subsec. (c). Pub. L. 97-34, § 402(a), (b)(1), designated existing provision as par. (1), inserted heading “In general” and substituted in table provision that if the amount computed is over \$2,500,000 then the tentative tax is \$1,025,800 plus 50% of the excess over \$2,500,000 for provisions that if the amount computed is over \$2,500,000 but not over \$3,000,000, then the tentative tax is \$1,025,800 plus 53% of the excess over \$2,500,000, over \$3,000,000 but not over \$3,500,000 then the tentative tax is \$1,290,000 plus 57% of the excess over \$3,000,000, over \$3,500,000 but not over \$4,000,000 then the tentative tax is \$1,575,800 plus 61% of the excess over \$3,500,000, over \$4,000,000 but not over \$4,500,000 then the tentative tax is \$1,880,800 plus 65% of the excess over \$4,000,000, over \$4,500,000 but not over \$5,000,000 then the tentative tax is \$2,205,800 plus 69% of the excess over \$4,500,000, over \$5,000,000 then the tentative tax is \$2,550,800 plus 70% of the excess over \$5,000,000, and added par. (2).

1978—Subsec. (e). Pub. L. 95-600 added subsec. (e).

1976—Pub. L. 94-455 substituted provisions setting a unified rate schedule for estate and gift taxes ranging from 18 percent for the first \$10,000 in taxable transfers to 70 percent of taxable transfers in excess of \$5,000,000, with provision for adjustments for gift taxes paid by spouses, for provisions setting an estate tax of 3 percent of the first \$5,000 of the taxable estate to 77 percent of the taxable estate in excess of \$10,000,000.

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title V, § 511(f)(1), (2), June 7, 2001, 115 Stat. 71, provided that:

“(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

“(2) SUBSECTION (c).—The amendment made by subsection (c) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2002.”

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section

4003(l) of Pub. L. 105-277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 501(f) of Pub. L. 105-34, as amended by Pub. L. 105-206, title VI, § 6007(a)(2), July 22, 1998, 112 Stat. 807, provided that: “The amendments made by this section [amending this section and sections 2010, 2032A, 2102, 2503, 2505, 2631, 6018, and 6601 of this title] (other than the amendment made by subsection (d) [amending section 2631 of this title]) shall apply to the estates of decedents dying, and gifts made, after December 31, 1997.”

Section 506(e)(1) of Pub. L. 105-34, as amended by Pub. L. 105-206, title VI, § 6007(e)(1), July 22, 1998, 112 Stat. 809, provided that: “The amendments made by subsections (a), (c), and (d) [enacting section 7477 of this title and amending this section and section 2504 of this title] shall apply to gifts made after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Section 13208(c) of Pub. L. 103-66 provided that: “The amendments made by this section [amending this section and section 2101 of this title] shall apply in the case of decedents dying and gifts made after December 31, 1992.”

#### EFFECTIVE DATE OF 1987 AMENDMENT

Section 10401(c) of Pub. L. 100-203 provided that: “The amendments made by this section [amending this section and section 2502 of this title] shall apply in the case of decedents dying, and gifts made, after December 31, 1987.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 21(b) of Pub. L. 98-369 provided that: “The amendments made by subsection (a) [amending this section] shall apply to the estates of decedents dying after, and gifts made after, December 31, 1983.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Section 402(d) of Pub. L. 97-34 provided that: “The amendments made by this section [amending this section] shall apply to estates of decedents dying after, and gifts made after, December 31, 1981.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(h)(3) of Pub. L. 95-600 provided that: “The amendments made by this subsection [amending this section and section 2602 of this title] shall apply with respect to the estates of decedents dying after December 31, 1976, except that such amendments shall not apply to transfers made before January 1, 1977.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 2001(d)(1) of Pub. L. 94-455 provided that: “The amendments made by subsections (a) [enacting section 2010, amending this section and sections 2012 and 2035, and repealing section 2052 of this title] and (c)(1) [amending sections 2011, 2012, 2013, 2014, 2038, 2044, 2101, 2102, 2104, 2106, 2107, 2206, 2207, and 6018 of this title] shall apply to the estates of decedents dying after December 31, 1976; except that the amendments made by subsection (a)(5) [amending section 2035 of this title] and subparagraphs (K) and (L) of subsection (c)(1) [amending sections 2038 and 2104 of this title] shall not apply to transfers made before January 1, 1977.”

#### SHORT TITLE

Pub. L. 91-614, §1(a), Dec. 31, 1970, 84 Stat. 1836, provided that: “This Act [enacting section 6905 of this title, section 1232a of Title 15, Commerce and Trade, and section 1033 of former Title 31, Money and Finance,

amending sections 56, 1015, 1223, 2012, 2032, 2055, 2204, 2501, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 4061, 4063, 4216, 4251, 4491, 6019, 6040, 6075, 6091, 6161, 6212, 6214, 6324, 6412, 6416, 6501, 6504, and 6512 of this title, and enacting provisions set out as notes under sections 56, 2032, 2204, 2501, 4063, 4216, 4251, 4491, and 6905 of this title] may be cited as the ‘Excise, Estate, and Gift Tax Adjustment Act of 1970’.”

#### CLARIFICATION OF TREATMENT OF CERTAIN EXEMPTIONS FOR PURPOSES OF FEDERAL ESTATE AND GIFT TAXES

Section 641 of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) GENERAL RULE.—Nothing in any provision of law exempting any property (or interest therein) from taxation shall exempt the transfer of such property (or interest therein) from Federal estate, gift, and generation-skipping transfer taxes. In the case of any provision of law enacted after the date of the enactment of this Act [July 18, 1984], such provision shall not be treated as exempting the transfer of property from Federal estate, gift, and generation-skipping transfer taxes unless it refers to the appropriate provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

#### “(b) EFFECTIVE DATE.—

“(1) IN GENERAL.—The provisions of subsection (a) shall apply to the estates of decedents dying, gifts made, and transfers made on or after June 19, 1984.

“(2) TREATMENT OF CERTAIN TRANSFERS TREATED AS TAXABLE.—The provisions of subsection (a) shall also apply in the case of any transfer of property (or interest therein) if at any time there was filed an estate or gift tax return showing such transfer as subject to Federal estate or gift tax.

“(3) NO INFERENCE.—No inference shall arise from paragraphs (1) and (2) that any transfer of property (or interest therein) before June 19, 1984, is exempt from Federal estate and gift taxes.”

#### REPORTS WITH TRANSFERS OF PUBLIC HOUSING BONDS

Section 642 of Pub. L. 98-369 provided that:

“(a) GENERAL RULE.—With respect to transfers of public housing bonds occurring after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

“(b) PENALTY FOR FAILURE TO REPORT.—Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift, or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject.”

#### § 2002. Liability for payment

The tax imposed by this chapter shall be paid by the executor.

(Aug. 16, 1954, ch. 736, 68A Stat. 374; Pub. L. 98-369, div. A, title V, § 544(b)(1), July 18, 1984, 98 Stat. 894; Pub. L. 101-239, title VII, § 7304(b)(2)(A), Dec. 19, 1989, 103 Stat. 2353.)

#### AMENDMENTS

1989—Pub. L. 101-239 substituted “The” for “Except as provided in section 2210, the”.

1984—Pub. L. 98-369 inserted exception phrase.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 7304(b)(3) of Pub. L. 101-239 provided that: “The amendments made by this subsection [amending this section and section 6018 of this title and repealing section 2210 of this title] shall apply to estates of decedents dying after July 12, 1989.”

## EFFECTIVE DATE OF 1984 AMENDMENT

Section 544(d) of Pub. L. 98-369 provided that: “The amendments made by this section [enacting section 2210 of this title and amending this section and sections 6018 and 6166 of this title] shall apply to those estates of decedents which are required to file returns on a date (including any extensions) after the date of enactment of this Act [July 18, 1984].”

## PART II—CREDITS AGAINST TAX

Sec.	
2010.	Unified credit against estate tax.
2011.	Credit for State death taxes.
2012.	Credit for gift tax.
2013.	Credit for tax on prior transfers.
2014.	Credit for foreign death taxes.
2015.	Credit for death taxes on remainders.
2016.	Recovery of taxes claimed as credit.

## AMENDMENTS

2004—Pub. L. 108-311, title IV, § 408(a)(20), Oct. 4, 2004, 118 Stat. 1192, added item 2011.

2001—Pub. L. 107-16, title V, § 532(c)(13), (d), title IX, § 901, June 7, 2001, 115 Stat. 75, 150, temporarily struck out item 2011 “Credit for State death taxes”. See Effective and Termination Dates of 2001 Amendment note set out under section 2011 of this title.

1976—Pub. L. 94-455, title XX, § 2001(c)(1)(N)(ii), Oct. 4, 1976, 90 Stat. 1853, added item 2010.

## § 2010. Unified credit against estate tax

## (a) General rule

A credit of the applicable credit amount shall be allowed to the estate of every decedent against the tax imposed by section 2001.

## (b) Adjustment to credit for certain gifts made before 1977

The amount of the credit allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the decedent after September 8, 1976.

## (c) Applicable credit amount

For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax is to be computed were the applicable exclusion amount determined in accordance with the following table:

In the case of estates of decedents dying during:	The applicable exclusion amount is:
2002 and 2003 .....	\$1,000,000
2004 and 2005 .....	\$1,500,000
2006, 2007, and 2008 .....	\$2,000,000
2009 .....	\$3,500,000.

## (d) Limitation based on amount of tax

The amount of the credit allowed by subsection (a) shall not exceed the amount of the tax imposed by section 2001.

(Added Pub. L. 94-455, title XX, § 2001(a)(2), Oct. 4, 1976, 90 Stat. 1848; amended Pub. L. 97-34, title IV, § 401(a)(1), (2)(A), Aug. 13, 1981, 95 Stat. 299; Pub. L. 101-508, title XI, § 11801(a)(39), (c)(19)(A), Nov. 5, 1990, 104 Stat. 1388-521, 1388-528; Pub. L. 105-34, title V, § 501(a)(1)(A), (B), Aug. 5, 1997, 111

Stat. 845; Pub. L. 107-16, title V, § 521(a), June 7, 2001, 115 Stat. 71.)

## AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

## REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (b), is Pub. L. 94-455, Oct. 4, 1976, 90 Stat. 1520, as amended. For complete classification of this Act to the Code, see Tables.

Section 2521 of this title, referred to in subsec. (b), was repealed by section 2001(b)(3) of Pub. L. 94-455, applicable to gifts made after Dec. 31, 1976.

## AMENDMENTS

2001—Subsec. (c). Pub. L. 107-16, §§ 521(a), 901, in table, temporarily substituted provision that in the case of estates of decedents dying during the years 2002 and 2003, the years 2004 and 2005, the years 2006, 2007, and 2008, and the year 2009, the applicable exclusion amount is \$1,000,000, \$1,500,000, \$2,000,000, and \$3,500,000, respectively, for provision that in the case of decedents dying, and gifts made, during the year 1998, the year 1999, the years 2000 and 2001, the years 2002 and 2003, the year 2004, the year 2005, and the year 2006 or thereafter, the applicable exclusion amount is \$625,000, \$650,000, \$675,000, \$700,000, \$850,000, \$950,000, and \$1,000,000, respectively. See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (a). Pub. L. 105-34, § 501(a)(1)(A), substituted “the applicable credit amount” for “\$192,800”.

Subsecs. (c), (d). Pub. L. 105-34, § 501(a)(1)(B), added subsec. (c) and redesignated former subsec. (c) as (d).

1990—Subsecs. (b) to (d). Pub. L. 101-508 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which provided for a phase-in of the unified credit against estate tax.

1981—Subsec. (a). Pub. L. 97-34, § 401(a)(1), substituted “\$192,800” for “\$47,000”.

Subsec. (b). Pub. L. 97-34, § 401(a)(2)(A), struck out “\$47,000” before “credit” from heading and in text substituted in subsec. (a) substitutions for “\$192,800” amounts of “\$62,800”, “\$79,300”, “\$96,300”, “\$121,800”, and “\$155,800” in the case of decedents dying in 1982, 1983, 1984, 1985, and 1986, respectively, for subsec. (a) substitutions for “\$47,000” amounts of “\$30,000”, “\$34,000”, “\$38,000”, and “\$42,500” in the case of decedents dying in 1977, 1978, 1979, and 1980, respectively.

## EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title V, § 521(e), June 7, 2001, 115 Stat. 72, provided that:

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 2057, 2505, and 2631 of this title] shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

“(2) SUBSECTION (b)(2).—The amendments made by subsection (b)(2) [amending section 2505 of this title] shall apply to gifts made after December 31, 2009.

“(3) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) and (d) [amending sections 2057 and 2631 of this title] shall apply to estates of decedents dying, and generation-skipping transfers, after December 31, 2003.”

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see

section 501(f) of Pub. L. 105-34, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Section 401(c)(1) of Pub. L. 97-34 provided that: “The amendments made by subsection (a) [amending this section and section 6018 of this title] shall apply to the estates of decedents dying after December 31, 1981”.

#### SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

### § 2011. Credit for State death taxes

#### (a) In general

The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

#### (b) Amount of credit

##### (1) In general

Except as provided in paragraph (2), the credit allowed by this section shall not exceed the appropriate amount stated in the following table:

If the adjusted taxable estate is:	The maximum tax credit shall be:
Not over \$90,000 .....	%ioths of 1% of the amount by which the adjusted taxable estate exceeds \$40,000.
Over \$90,000 but not over \$140,000.	\$400 plus 1.6% of the excess over \$90,000.
Over \$140,000 but not over \$240,000.	\$1,200 plus 2.4% of the excess over \$140,000.
Over \$240,000 but not over \$440,000.	\$3,600 plus 3.2% of the excess over \$240,000.
Over \$440,000 but not over \$640,000.	\$10,000 plus 4% of the excess over \$440,000.
Over \$640,000 but not over \$840,000.	\$18,000 plus 4.8% of the excess over \$640,000.
Over \$840,000 but not over \$1,040,000.	\$27,600 plus 5.6% of the excess over \$840,000.
Over \$1,040,000 but not over \$1,540,000.	\$38,800 plus 6.4% of the excess over \$1,040,000.
Over \$1,540,000 but not over \$2,040,000.	\$70,800 plus 7.2% of the excess over \$1,540,000.
Over \$2,040,000 but not over \$2,540,000.	\$106,800 plus 8% of the excess over \$2,040,000.
Over \$2,540,000 but not over \$3,040,000.	\$146,800 plus 8.8% of the excess over \$2,540,000.
Over \$3,040,000 but not over \$3,540,000.	\$190,800 plus 9.6% of the excess over \$3,040,000.
Over \$3,540,000 but not over \$4,040,000.	\$238,800 plus 10.4% of the excess over \$3,540,000.
Over \$4,040,000 but not over \$5,040,000.	\$290,800 plus 11.2% of the excess over \$4,040,000.
Over \$5,040,000 but not over \$6,040,000.	\$402,800 plus 12% of the excess over \$5,040,000.
Over \$6,040,000 but not over \$7,040,000.	\$522,800 plus 12.8% of the excess over \$6,040,000.
Over \$7,040,000 but not over \$8,040,000.	\$650,800 plus 13.6% of the excess over \$7,040,000.
Over \$8,040,000 but not over \$9,040,000.	\$786,800 plus 14.4% of the excess over \$8,040,000.
Over \$9,040,000 but not over \$10,040,000.	\$930,800 plus 15.2% of the excess over \$9,040,000.

#### If the adjusted taxable estate is:

Over \$10,040,000 .....

#### The maximum tax credit shall be:

\$1,082,800 plus 16% of the excess over \$10,040,000.

### (2) Reduction of maximum credit

#### (A) In general

In the case of estates of decedents dying after December 31, 2001, the credit allowed by this section shall not exceed the applicable percentage of the credit otherwise determined under paragraph (1).

#### (B) Applicable percentage

#### In the case of estates of decedents dying during:

#### The applicable percentage is:

2002 .....	75 percent
2003 .....	50 percent
2004 .....	25 percent.

### (3) Adjusted taxable estate

For purposes of this section, the term “adjusted taxable estate” means the taxable estate reduced by \$60,000.

### (c) Period of limitations on credit

The credit allowed by this section shall include only such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), then within such 4-year period or before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) If, under section 6161 or 6166, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such 4-year period or before the date of the expiration of the period of the extension.

(3) If a claim for refund or credit of an overpayment of tax imposed by this chapter has been filed within the time prescribed in section 6511, then within such 4-year period or before the expiration of 60 days from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of any part of such claim, or before the expiration of 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon such claim, whichever is later.

Refund based on the credit may (despite the provisions of sections 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

### (d) Limitation in cases involving deduction under section 2053(d)

In any case where a deduction is allowed under section 2053(d) for an estate, succession, legacy, or inheritance tax imposed by a State or the District of Columbia upon a transfer for public, charitable, or religious uses described in section 2055 or 2106(a)(2), the allowance of the credit under this section shall be subject to the following conditions and limitations:

(1) The taxes described in subsection (a) shall not include any estate, succession, leg-

acy, or inheritance tax for which such deduction is allowed under section 2053(d).

(2) The credit shall not exceed the lesser of—

(A) the amount stated in subsection (b) on an adjusted taxable estate determined by allowing such deduction authorized by section 2053(d), or

(B) that proportion of the amount stated in subsection (b) on an adjusted taxable estate determined without regard to such deduction authorized by section 2053(d) as (i) the amount of the taxes described in subsection (a), as limited by the provisions of paragraph (1) of this subsection, bears to (ii) the amount of the taxes described in subsection (a) before applying the limitation contained in paragraph (1) of this subsection.

(3) If the amount determined under subparagraph (B) of paragraph (2) is less than the amount determined under subparagraph (A) of that paragraph, then for purposes of subsection (d) such lesser amount shall be the maximum credit provided by subsection (b).

#### (e) Limitation based on amount of tax

The credit provided by this section shall not exceed the amount of the tax imposed by section 2001, reduced by the amount of the unified credit provided by section 2010.

#### (f) Termination

This section shall not apply to the estates of decedents dying after December 31, 2004.

(Aug. 16, 1954, ch. 736, 68A Stat. 374; Feb. 20, 1956, ch. 63, § 3, 70 Stat. 24; Pub. L. 85-866, title I, §§ 65(a), 102(c)(1), Sept. 2, 1958, 72 Stat. 1657, 1674; Pub. L. 86-175, § 3, Aug. 21, 1959, 73 Stat. 397; Pub. L. 94-455, title XIX, §§ 1902(a)(12)(B), 1906(b)(13)(A), title XX, §§ 2001(c)(1)(A), 2004(f)(3), Oct. 4, 1976, 90 Stat. 1806, 1834, 1849, 1872; Pub. L. 97-34, title IV, § 422(e)(2), Aug. 13, 1981, 95 Stat. 316; Pub. L. 107-16, title V, §§ 531(a), 532(a), June 7, 2001, 115 Stat. 72, 73; Pub. L. 107-134, title I, § 103(b)(1), Jan. 23, 2002, 115 Stat. 2431.)

#### AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

#### AMENDMENTS

2002—Subsecs. (d) to (g). Pub. L. 107-134 redesignated subsecs. (e) to (g) as (d) to (f), respectively, and struck out heading and text of former subsec. (d). Text read as follows: “The basic estate tax and the estate tax imposed by the Revenue Act of 1926 shall be 125 percent of the amount determined to be the maximum credit provided by subsection (b). The additional estate tax shall be the difference between the tax imposed by section 2001 or 2101 and the basic estate tax.”

2001—Subsec. (b). Pub. L. 107-16, §§ 531(a), 901, temporarily designated existing provisions as pars. (1) and (3), inserted headings, in par. (1) substituted “Except as provided in paragraph (2), the credit allowed” for “The credit allowed”, and added par. (2). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (g). Pub. L. 107-16, §§ 532(a), 901, temporarily added subsec. (g). See Effective and Termination Dates of 2001 Amendment note below.

1981—Subsec. (c)(2). Pub. L. 97-34 struck out reference to section 6166A.

1976—Subsec. (a). Pub. L. 94-455, § 1902(a)(12)(B), struck out “or Territory” after “State”.

Subsec. (b). Pub. L. 94-455, § 2001(c)(1)(A)(i), (ii), substituted “adjusted taxable estate” for “taxable estate” in two places in table and inserted provision that, for purposes of this section, “adjusted taxable estate” means the taxable estate reduced by \$60,000.

Subsec. (c)(2). Pub. L. 94-455, § 2004(f)(3), substituted “section 6161, 6166, or 6166A” for “section 6161”.

Subsec. (c)(3). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (e). Pub. L. 94-455, §§ 1902(a)(12)(B), 2001(c)(1)(A)(iii), substituted “adjusted taxable estate” for “taxable estate” in par. (2) and struck out “or Territory” after “imposed by a State” in provisions preceding par. (1).

Subsec. (f). Pub. L. 94-455, § 2001(c)(1)(A)(iv), added subsec. (f).

1959—Subsec. (e). Pub. L. 86-175 substituted “imposed by a State or Territory or the District of Columbia upon a transfer” for “imposed upon a transfer” in introduction, “such deduction” for “a deduction” in par. (1) and “such deduction” for “the deduction” in two places in par. (2).

1958—Subsec. (a). Pub. L. 85-866, § 102(c)(1), struck out “or any possession of the United States,” after “District of Columbia.”

Subsec. (c)(3). Pub. L. 85-866, § 65(a), added par. (3).

1956—Subsec. (e). Act Feb. 20, 1956, added subsec. (e).

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-134, title I, § 103(d), Jan. 23, 2002, 115 Stat. 2431, provided that:

“(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 2053 and 2201 of this title] shall apply to estates of decedents—

“(A) dying on or after September 11, 2001; and

“(B) in the case of individuals dying as a result of the April 19, 1995, terrorist attack, dying on or after April 19, 1995.

“(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.”

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title V, § 531(b), June 7, 2001, 115 Stat. 73, as amended by Pub. L. 108-311, title IV, § 408(b)(6), Oct. 4, 2004, 118 Stat. 1192, provided that: “The amendments made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2001.”

Pub. L. 107-16, title V, § 532(d), June 7, 2001, 115 Stat. 75, provided that: “The amendments made by this section [enacting section 2058 of this title and amending this section and sections 2012 to 2016, 2053, 2056A, 2102, 2106, 2107, 2201, 2604, 6511, and 6612 of this title] shall apply to estates of decedents dying, and generation-skipping transfers, after December 31, 2004.”

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97-34, set out as a note under section 6166 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 1902(c)(1) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, § 703(j)(12), Nov. 6, 1978, 92 Stat.

2942, provided that: “The amendments made by paragraphs (1) through (8), and paragraphs (12)(A), (B), and (C), of subsection (a) and by subsection (b) [amending this section and sections 2012, 2013, 2016, 2038, 2053, 2055, 2056, 2106, 2107, 2108, 2201, 6167, and 6503 of this title, repealing section 2202 of this title, and enacting provisions set out as a note under section 2201 of this title] shall apply in the case of estates of decedents dying after the date of the enactment of this Act [Oct. 4, 1976], and the amendment made by paragraph (9) of subsection (a) [amending section 2204 of this title] shall apply in the case of estates of decedents dying after December 31, 1970.”

Amendment by section 1902(a)(12)(B) of Pub. L. 94-455 applicable with respect to gifts made after Dec. 31, 1976, see section 1902(c)(2) of Pub. L. 94-455, set out as a note under section 2501 of this title.

Amendment by section 2001(c)(1)(A) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

Amendment by section 2004(f)(3) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94-455, set out as an Effective Date note under section 6166 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-175 applicable with respect to estates of decedents dying on or after July 1, 1955, see section 4 of Pub. L. 86-175, set out as a note under section 2053 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Section 65(c) of Pub. L. 85-866 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after August 16, 1954. The amendment made by subsection (b) [amending this section] shall apply with respect to estates of decedents dying after February 10, 1939, and on or before August 16, 1954.”

Section 102(d) of Pub. L. 85-866 provided that: “The amendments made by this section (other than by subsection (b)) [enacting section 2208 of this title and amending this section and sections 2104 and 2053 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Sept. 2, 1958]. The amendment made by subsection (b) [amending section 2501 of this title] shall apply to gifts made after the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Feb. 20, 1956, applicable to the estates of all decedents dying after Dec. 31, 1953, see section 4 of act Feb. 20, 1956, set out as a note under section 2053 of this title.

### § 2012. Credit for gift tax

#### (a) In general

If a tax on a gift has been paid under chapter 12 (sec. 2501 and following), or under corresponding provisions of prior laws, and thereafter on the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for purposes of this chapter, then there shall be credited against the tax imposed by section 2001 the amount of the tax paid on a gift under chapter 12, or under corresponding provisions of prior laws, with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 2001 (after deducting from such tax the unified credit provided by section 2010) as the value (at the time of the gift or at the time of the death,

whichever is lower) of so much of the property which constituted the gift as is included in the gross estate bears to the value of the entire gross estate reduced by the aggregate amount of the charitable and marital deductions allowed under sections 2055, 2056, and 2106(a)(2).

#### (b) Valuation reductions

In applying, with respect to any gift, the ratio stated in subsection (a), the value at the time of the gift or at the time of the death, referred to in such ratio, shall be reduced—

(1) by such amount as will properly reflect the amount of such gift which was excluded in determining (for purposes of section 2503(a)), or of corresponding provisions of prior laws, the total amount of gifts made during the calendar quarter (or calendar year if the gift was made before January 1, 1971) in which the gift was made;

(2) if a deduction with respect to such gift is allowed under section 2056(a) (relating to marital deduction), then by the amount of such value, reduced as provided in paragraph (1); and

(3) if a deduction with respect to such gift is allowed under sections 2055 or 2106(a)(2) (relating to charitable deduction), then by the amount of such value, reduced as provided in paragraph (1) of this subsection.

#### (c) Where gift considered made one-half by spouse

Where the decedent was the donor of the gift but, under the provisions of section 2513, or corresponding provisions of prior laws, the gift was considered as made one-half by his spouse—

(1) the term “the amount of the tax paid on a gift under chapter 12”, as used in subsection (a), includes the amounts paid with respect to each half of such gift, the amount paid with respect to each being computed in the manner provided in subsection (d); and

(2) in applying, with respect to such gift, the ratio stated in subsection (a), the value at the time of the gift or at the time of the death, referred to in such ratio, includes such value with respect to each half of such gift, each such value being reduced as provided in paragraph (1) of subsection (b).

#### (d) Computation of amount of gift tax paid

##### (1) Amount of tax

For purposes of subsection (a), the amount of tax paid on a gift under chapter 12, or under corresponding provisions of prior laws, with respect to any gift shall be an amount which bears the same ratio to the total tax paid for the calendar quarter (or calendar year if the gift was made before January 1, 1971) in which the gift was made as the amount of such gift bears to the total amount of taxable gifts (computed without deduction of the specific exemption) for such quarter or year.

##### (2) Amount of gift

For purposes of paragraph (1), the “amount of such gift” shall be the amount included with respect to such gift in determining (for the purposes of section 2503(a), or of corresponding provisions of prior laws) the total amount of gifts made during such quarter or



year, reduced by the amount of any deduction allowed with respect to such gift under section 2522, or under corresponding provisions of prior laws (relating to charitable deduction), or under section 2523 (relating to marital deduction).

**(e) Section inapplicable to gifts made after December 31, 1976**

No credit shall be allowed under this section with respect to the amount of any tax paid under chapter 12 on any gift made after December 31, 1976.

(Aug. 16, 1954, ch. 736, 68A Stat. 375; Pub. L. 91-614, title I, §102(d)(2), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94-455, title XIX, §1902(a)(1), title XX, §2001(a)(3), (c)(1)(B), Oct. 4, 1976, 90 Stat. 1804, 1848, 1850; Pub. L. 97-34, title IV, §403(a)(2)(A), Aug. 13, 1981, 95 Stat. 301; Pub. L. 107-16, title V, §532(c)(1), June 7, 2001, 115 Stat. 73.)

**AMENDMENT OF SECTION**

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

**AMENDMENTS**

2001—Subsec. (a). Pub. L. 107-16, §§532(c)(1), 901, temporarily struck out “the credit for State death taxes provided by section 2011 and” before “the unified credit”. See Effective and Termination Dates of 2001 Amendment note below.

1981—Subsec. (b)(2). Pub. L. 97-34 substituted “the amount of such value, reduced as provided in paragraph (1)” for “an amount which bears the same ratio to such value (reduced as provided in paragraph (1) of this subsection) as the aggregate amount of the marital deductions allowed under section 2056(a) bears to the aggregate amount of such marital deductions computed without regard to subsection (c) thereof”.

1976—Subsec. (a). Pub. L. 94-455, §2001(c)(1)(B), substituted “provided by section 2011 and the unified credit provided by section 2010” for “provided by section 2011”.

Subsec. (b). Pub. L. 94-455, §1902(a)(1)(A), added heading and substituted a comma for a dash after “deduction” in pars. (2) and (3).

Subsec. (c). Pub. L. 94-455, §1902(a)(1)(B), added heading.

Subsec. (d). Pub. L. 94-455, §1902(a)(1)(C), (D), added headings for subsec. (d) and for pars. (1) and (2).

Subsec. (e). Pub. L. 94-455, §2001(a)(3), added subsec. (e).

1970—Subsec. (b)(1). Pub. L. 91-614, §102(d)(2)(A), substituted “the calendar quarter (or calendar year if the gift was made before January 1, 1971)” for “the year”.

Subsec. (d). Pub. L. 91-614, §102(d)(2)(B), substituted “such quarter or year” for “such year” in two places.

Subsec. (d)(1). Pub. L. 91-614, §102(d)(2)(A), substituted “the calendar quarter (or calendar year if the gift was made before January 1, 1971)” for “the year”.

**EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT**

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1981 AMENDMENT**

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, but inapplicable under certain conditions under will executed before date which is 30 days after Aug. 13, 1981, or under trust created by such date, see section 403(e) of Pub. L. 97-34, set out as a note under section 2056 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by section 1902(a)(1) of Pub. L. 94-455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2011 of this title.

Amendment by section 2001(a)(3), (c)(1)(B) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

**EFFECTIVE DATE OF 1970 AMENDMENT**

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

**§ 2013. Credit for tax on prior transfers**

**(a) General rule**

The tax imposed by section 2001 shall be credited with all or a part of the amount of the Federal estate tax paid with respect to the transfer of property (including property passing as a result of the exercise or non-exercise of a power of appointment) to the decedent by or from a person (herein designated as a “transferor”) who died within 10 years before, or within 2 years after, the decedent’s death. If the transferor died within 2 years of the death of the decedent, the credit shall be the amount determined under subsections (b) and (c). If the transferor predeceased the decedent by more than 2 years, the credit shall be the following percentage of the amount so determined—

- (1) 80 percent, if within the third or fourth years preceding the decedent’s death;
- (2) 60 percent, if within the fifth or sixth years preceding the decedent’s death;
- (3) 40 percent, if within the seventh or eighth years preceding the decedent’s death; and
- (4) 20 percent, if within the ninth or tenth years preceding the decedent’s death.

**(b) Computation of credit**

Subject to the limitation prescribed in subsection (c), the credit provided by this section shall be an amount which bears the same ratio to the estate tax paid (adjusted as indicated hereinafter) with respect to the estate of the transferor as the value of the property transferred bears to the taxable estate of the transferor (determined for purposes of the estate tax) decreased by any death taxes paid with respect to such estate. For purposes of the preceding sentence, the estate tax paid shall be the Federal estate tax paid increased by any credits allowed against such estate tax under section 2012, or corresponding provisions of prior laws, on account of gift tax, and for any credits allowed against such estate tax under this section on account of prior transfers where the transferor acquired property from a person who died within 10 years before the death of the decedent.

**(c) Limitation on credit**

**(1) In general**

The credit provided in this section shall not exceed the amount by which—

(A) the estate tax imposed by section 2001 or section 2101 (after deducting the credits provided for in sections 2010, 2012, and 2014) computed without regard to this section, exceeds

(B) such tax computed by excluding from the decedent's gross estate the value of such property transferred and, if applicable, by making the adjustment hereinafter indicated.

If any deduction is otherwise allowable under section 2055 or section 2106(a)(2) (relating to charitable deduction) then, for the purpose of the computation indicated in subparagraph (B), the amount of such deduction shall be reduced by that part of such deduction which the value of such property transferred bears to the decedent's entire gross estate reduced by the deductions allowed under sections 2053 and 2054, or section 2106(a)(1) (relating to deduction for expenses, losses, etc.). For purposes of this section, the value of such property transferred shall be the value as provided for in subsection (d) of this section.

**(2) Two or more transferors**

If the credit provided in this section relates to property received from 2 or more transferors, the limitation provided in paragraph (1) of this subsection shall be computed by aggregating the value of the property so transferred to the decedent. The aggregate limitation so determined shall be apportioned in accordance with the value of the property transferred to the decedent by each transferor.

**(d) Valuation of property transferred**

The value of property transferred to the decedent shall be the value used for the purpose of determining the Federal estate tax liability of the estate of the transferor but—

(1) there shall be taken into account the effect of the tax imposed by section 2001 or 2101, or any estate, succession, legacy, or inheritance tax, on the net value to the decedent of such property;

(2) where such property is encumbered in any manner, or where the decedent incurs any obligation imposed by the transferor with respect to such property, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to the decedent of such property was being determined; and

(3) if the decedent was the spouse of the transferor at the time of the transferor's death, the net value of the property transferred to the decedent shall be reduced by the amount allowed under section 2056 (relating to marital deductions), as a deduction from the gross estate of the transferor.

**(e) Property defined**

For purposes of this section, the term "property" includes any beneficial interest in property, including a general power of appointment (as defined in section 2041).

**(f) Treatment of additional tax imposed under section 2032A**

If section 2032A applies to any property included in the gross estate of the transferor and

an additional tax is imposed with respect to such property under section 2032A(c) before the date which is 2 years after the date of the decedent's death, for purposes of this section—

(1) the additional tax imposed by section 2032A(c) shall be treated as a Federal estate tax payable with respect to the estate of the transferor; and

(2) the value of such property and the amount of the taxable estate of the transferor shall be determined as if section 2032A did not apply with respect to such property.

(Aug. 16, 1954, ch. 736, 68A Stat. 377; Pub. L. 94-455, title XIX, § 1902(a)(2), title XX, §§ 2001(c)(1)(C), 2003(c), 2006(b)(2), Oct. 4, 1976, 90 Stat. 1804, 1850, 1862, 1888; Pub. L. 99-514, title XIV, § 1432(c)(2), Oct. 22, 1986, 100 Stat. 2730; Pub. L. 100-647, title I, § 1011A(g)(7), Nov. 10, 1988, 102 Stat. 3481; Pub. L. 105-34, title X, § 1073(b)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107-16, title V, § 532(c)(2), June 7, 2001, 115 Stat. 74.)

**AMENDMENT OF SECTION**

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

**AMENDMENTS**

2001—Subsec. (c)(1)(A). Pub. L. 107-16, § 532(c)(2), 901, temporarily struck out "2011," after "sections 2010,". See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (g). Pub. L. 105-34 struck out heading and text of subsec. (g). Prior to amendment, text read as follows: "For purposes of this section, the estate tax paid shall not include any portion of such tax attributable to section 4980A(d)."

1988—Subsec. (g). Pub. L. 100-647 added subsec. (g).

1986—Subsec. (g). Pub. L. 99-514 struck out subsec. (g) which provided for treatment of tax imposed on certain generation-skipping transfers.

1976—Subsec. (b). Pub. L. 94-455, § 2001(c)(1)(C)(i), struck out "and increased by the exemption provided for by section 2052 or section 2106(a)(3), or the corresponding provisions of prior laws, in determining the taxable estate of the transferor for purposes of the estate tax" after "death taxes paid with respect to such estate".

Subsec. (c)(1)(A). Pub. L. 94-455, § 2001(c)(1)(C)(ii), substituted "credits provided for in sections 2010, 2011, 2012, and 2014) computed" for "credits for State death taxes, gift tax, and foreign death taxes provided for in sections 2011, 2012, and 2014) computed".

Subsec. (d)(3). Pub. L. 94-455, § 1902(a)(2), struck out "or the corresponding provision of prior law," after "marital deductions".

Subsec. (f). Pub. L. 94-455, § 2003(c), added subsec. (f).

Subsec. (g). Pub. L. 94-455, § 2006(b)(2), added subsec. (g).

**EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT**

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-34 applicable to estates of decedents dying after Dec. 31, 1996, see section 1073(c) of

Pub. L. 105-34, set out as an Effective Date of Repeal note under section 4980A of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99-514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as an Effective Date note under section 2601 of this title.

**§ 2014. Credit for foreign death taxes**

**(a) In general**

The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property situated within such foreign country and included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The determination of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States.

**(b) Limitations on credit**

The credit provided in this section with respect to such taxes paid to any foreign country—

(1) shall not, with respect to any such tax, exceed an amount which bears the same ratio to the amount of such tax actually paid to such foreign country as the value of property which is—

- (A) situated within such foreign country,
- (B) subjected to such tax, and
- (C) included in the gross estate

bears to the value of all property subjected to such tax; and

(2) shall not, with respect to all such taxes, exceed an amount which bears the same ratio to the tax imposed by section 2001 (after deducting from such tax the credits provided by sections 2010 and 2012) as the value of property which is—

- (A) situated within such foreign country,
- (B) subjected to the taxes of such foreign country, and
- (C) included in the gross estate

bears to the value of the entire gross estate reduced by the aggregate amount of the deductions allowed under sections 2055 and 2056.

**(c) Valuation of property**

(1) The values referred to in the ratio stated in subsection (b)(1) are the values determined for purposes of the tax imposed by such foreign country.

(2) The values referred to in the ratio stated in subsection (b)(2) are the values determined under this chapter; but, in applying such ratio, the value of any property described in subparagraphs (A), (B), and (C) thereof shall be reduced

by such amount as will properly reflect, in accordance with regulations prescribed by the Secretary, the deductions allowed in respect of such property under sections 2055 and 2056 (relating to charitable and marital deductions).

**(d) Proof of credit**

The credit provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary—

(1) the amount of taxes actually paid to the foreign country,

(2) the amount and date of each payment thereof,

(3) the description and value of the property in respect of which such taxes are imposed, and

(4) all other information necessary for the verification and computation of the credit.

**(e) Period of limitation**

The credit provided in this section shall be allowed only for such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), then within such 4-year period or before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) If, under section 6161, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such 4-year period or before the date of the expiration of the period of the extension.

Refund based on such credit may (despite the provisions of sections 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

**(f) Additional limitation in cases involving a deduction under section 2053(d)**

In any case where a deduction is allowed under section 2053(d) for an estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country upon a transfer by the decedent for public, charitable, or religious uses described in section 2055, the property described in subparagraphs (A), (B), and (C) of paragraphs (1) and (2) of subsection (b) of this section shall not include any property in respect of which such deduction is allowed under section 2053(d).

**(g) Possession of United States deemed a foreign country**

For purposes of the credits authorized by this section, each possession of the United States shall be deemed to be a foreign country.

**(h) Similar credit required for certain alien residents**

Whenever the President finds that—

(1) a foreign country, in imposing estate, inheritance, legacy, or succession taxes, does not allow to citizens of the United States resident in such foreign country at the time of death a credit similar to the credit allowed under subsection (a),

(2) such foreign country, when requested by the United States to do so has not acted to

provide such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death, and

(3) it is in the public interest to allow the credit under subsection (a) in the case of citizens or subjects of such foreign country only if it allows such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death,

the President shall proclaim that, in the case of citizens or subjects of such foreign country dying while the proclamation remains in effect, the credit under subsection (a) shall be allowed only if such foreign country allows such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death.

(Aug. 16, 1954, ch. 736, 68A Stat. 378; Pub. L. 85-866, title I, §102(c)(2), Sept. 2, 1958, 72 Stat. 1674; Pub. L. 86-175, §2, Aug. 21, 1959, 73 Stat. 397; Pub. L. 89-809, title I, §106(b)(3), Nov. 13, 1966, 80 Stat. 1570; Pub. L. 94-455, title XIX, §1906(b)(13)(A), title XX, §2001(c)(1)(G), Oct. 4, 1976, 90 Stat. 1834, 1852; Pub. L. 107-16, title V, §532(c)(3), June 7, 2001, 115 Stat. 74.)

#### AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

#### AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107-16, §§532(c)(3), 901, temporarily struck out “, 2011,” after “sections 2010” in introductory provisions. See Effective and Termination Dates of 2001 Amendment note below.

1976—Subsec. (b)(2). Pub. L. 94-455, §2001(c)(1)(G), inserted reference to section 2010 in introductory provisions.

Subsecs. (c), (d). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1966—Subsec. (a). Pub. L. 89-809 struck out provision that, if the decedent at the time of his death was not a citizen of the United States, credit would not be allowed under this section unless the foreign country of which the decedent was a citizen or subject, in imposing estate, inheritance, legacy, or succession taxes, allows a similar credit in the case of a citizen of the United States resident in such country.

Subsec. (h). Pub. L. 89-809 added subsec. (h).

1959—Subsecs. (f), (g). Pub. L. 86-175 added subsec. (f) and redesignated former subsec. (f) as (g).

1958—Subsec. (f). Pub. L. 85-866 added subsec. (f).

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 106(b)(4) of Pub. L. 89-809, set out as a note under section 901 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-175 applicable with respect to estates of decedents dying on or after July 1, 1955,

see section 4 of Pub. L. 86-175, set out as a note under section 2053 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to estates of decedents dying after Sept. 2, 1958, see section 102(d) of Pub. L. 85-866, set out as a note under section 2011 of this title.

### § 2015. Credit for death taxes on remainders

Where an election is made under section 6163(a) to postpone payment of the tax imposed by section 2001, or 2101, such part of any estate, inheritance, legacy, or succession taxes allowable as a credit under section 2014, as is attributable to a reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the limitations on the amount of the credit contained in such sections, if such part is paid, and credit therefor claimed, at any time before the expiration of the time for payment of the tax imposed by section 2001 or 2101 as postponed and extended under section 6163.

(Aug. 16, 1954, ch. 736, 68A Stat. 379; Pub. L. 85-866, title I, §66(a)(1), Sept. 2, 1958, 72 Stat. 1657; Pub. L. 107-16, title V, §532(c)(4), June 7, 2001, 115 Stat. 74.)

#### AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

#### AMENDMENTS

2001—Pub. L. 107-16, §§532(c)(4), 901, temporarily struck out “2011 or” before “2014”. See Effective and Termination Dates of 2001 Amendment note below.

1958—Pub. L. 85-866 substituted “the time for payment of the tax imposed by section 2001 or 2101 as postponed and extended under section 6163” for “60 days after the termination of the precedent interest or interests in the property”.

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Section 66(a)(3) of Pub. L. 85-866 provided that: “The amendments made by paragraphs (1) and (2) [amending this section and section 927 of I.R.C. 1939] shall apply in the case of any reversionary or remainder interest in property only if the precedent interest or interests in the property did not terminate before the beginning of the 60-day period which ends on the date of the enactment of this Act [Sept. 2, 1958].”

### § 2016. Recovery of taxes claimed as credit

If any tax claimed as a credit under section 2014 is recovered from any foreign country, the executor, or any other person or persons recovering such amount, shall give notice of such recovery to the Secretary at such time and in such

manner as may be required by regulations prescribed by him, and the Secretary shall (despite the provisions of section 6501) redetermine the amount of the tax under this chapter and the amount, if any, of the tax due on such redetermination, shall be paid by the executor or such person or persons, as the case may be, on notice and demand. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary resulting from a refund to the executor of tax claimed as a credit under section 2014, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country on such refund.

(Aug. 16, 1954, ch. 736, 68A Stat. 380; Pub. L. 94-455, title XIX, §§1902(a)(12)(C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1806, 1834; Pub. L. 107-16, title V, §532(c)(4), June 7, 2001, 115 Stat. 74; Pub. L. 107-147, title IV, §411(h), Mar. 9, 2002, 116 Stat. 46.)

#### AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

#### AMENDMENTS

2002—Pub. L. 107-147 struck out “any State, any possession of the United States, or the District of Columbia,” after “any foreign country.”

2001—Pub. L. 107-16, §§532(c)(4), 901, temporarily struck out “2011 or” before “2014 is recovered”. See Effective and Termination Dates of 2001 Amendment note below.

1976—Pub. L. 94-455 struck out “Territory or” after “any State, any” and “or his delegate” after “Secretary”.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

### PART III—GROSS ESTATE

Sec.	
2031.	Definition of gross estate.
2032.	Alternate valuation.
2032A.	Valuation of certain farm, etc., real property.
2033.	Property in which the decedent had an interest.
[2033A.	Renumbered.]
2034.	Dower or curtesy interests.
2035.	Adjustments for certain gifts made within 3 years of decedent's death.
2036.	Transfers with retained life estate.
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Sec.	
2040.	Joint interests.
2041.	Powers of appointment.
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2043.	Transfers for insufficient consideration.
2044.	Certain property for which marital deduction was previously allowed.
2045.	Prior interests.
2046.	Disclaimers.

#### AMENDMENTS

1998—Pub. L. 105-206, title VI, §6007(b)(1)(E), July 22, 1998, 112 Stat. 808, struck out item 2033A “Family-owned business exclusion”.

1997—Pub. L. 105-34, title V, §502(b), title XIII, §1310(b), Aug. 5, 1997, 111 Stat. 852, 1044, added item 2033A and substituted “certain gifts” for “gifts” in item 2035.

1981—Pub. L. 97-34, title IV, §403(d)(3)(A)(ii), Aug. 13, 1981, 95 Stat. 304, added item 2044 and redesignated former items 2044 and 2045 as items 2045 and 2046, respectively.

1976—Pub. L. 94-455, title XX, §§2001(c)(1)(N)(iii), 2003(d)(1), 2009(b)(3)(B), Oct. 4, 1976, 90 Stat. 1853, 1862, 1894, added items 2032A and 2045 and substituted “Adjustments for gifts made within 3 years of decedent's death” for “Transactions in contemplation of death” in item 2035.

### § 2031. Definition of gross estate

#### (a) General

The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

#### (b) Valuation of unlisted stock and securities

In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

#### (c) Estate tax with respect to land subject to a qualified conservation easement

##### (1) In general

If the executor makes the election described in paragraph (6), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the lesser of—

(A) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or

(B) the exclusion limitation.

##### (2) Applicable percentage

For purposes of paragraph (1), the term “applicable percentage” means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land <sup>1</sup>(determined without regard to the

<sup>1</sup> So in original. No closing parenthesis was enacted.

value of such easement and reduced by the value of any retained development right (as defined in paragraph (5)). The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).

### (3) Exclusion limitation

For purposes of paragraph (1), the exclusion limitation is the limitation determined in accordance with the following table:

<b>In the case of estates of decedents dying during:</b>	<b>The exclusion limitation is:</b>
1998 .....	\$100,000
1999 .....	\$200,000
2000 .....	\$300,000
2001 .....	\$400,000
2002 or thereafter .....	\$500,000.

### (4) Treatment of certain indebtedness

#### (A) In general

The exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

#### (B) Definitions

For purposes of this paragraph—

##### (i) Debt-financed property

The term “debt-financed property” means any property with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent’s death.

##### (ii) Acquisition indebtedness

The term “acquisition indebtedness” means, with respect to debt-financed property, the unpaid amount of—

(I) the indebtedness incurred by the donor in acquiring such property,

(II) the indebtedness incurred before the acquisition of such property if such indebtedness would not have been incurred but for such acquisition,

(III) the indebtedness incurred after the acquisition of such property if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, and

(IV) the extension, renewal, or refinancing of an acquisition indebtedness.

### (5) Treatment of retained development right

#### (A) In general

Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

#### (B) Termination of retained development right

If every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of the tax imposed by section 2001, then any tax imposed by section 2001 shall be

reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

### (C) Additional tax

Any failure to implement the agreement described in subparagraph (B) not later than the earlier of—

(i) the date which is 2 years after the date of the decedent’s death, or

(ii) the date of the sale of such land subject to the qualified conservation easement,

shall result in the imposition of an additional tax in the amount of the tax which would have been due on the retained development rights subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following such date.

### (D) Development right defined

For purposes of this paragraph, the term “development right” means any right to use the land subject to the qualified conservation easement in which such right is retained for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 2032A(e)(5)).

### (6) Election

The election under this subsection shall be made on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return. Such an election, once made, shall be irrevocable.

### (7) Calculation of estate tax due

An executor making the election described in paragraph (6) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (5)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall be done in such manner and on such forms as the Secretary shall prescribe.

### (8) Definitions

For purposes of this subsection—

#### (A) Land subject to a qualified conservation easement

The term “land subject to a qualified conservation easement” means land—

(i) which is located in the United States or any possession of the United States,

(ii) which was owned by the decedent or a member of the decedent’s family at all times during the 3-year period ending on the date of the decedent’s death, and

(iii) with respect to which a qualified conservation easement has been made by an individual described in subparagraph (C), as of the date of the election described in paragraph (6).

#### (B) Qualified conservation easement

The term “qualified conservation easement” means a qualified conservation con-

tribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that clause (iv) of section 170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on more than a de minimis use for a commercial recreational activity.

**(C) Individual described**

An individual is described in this subparagraph if such individual is—

- (i) the decedent,
- (ii) a member of the decedent's family,
- (iii) the executor of the decedent's estate, or
- (iv) the trustee of a trust the corpus of which includes the land to be subject to the qualified conservation easement.

**(D) Member of family**

The term “member of the decedent's family” means any member of the family (as defined in section 2032A(e)(2)) of the decedent.

**(9) Treatment of easements granted after death**

In any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.

**(10) Application of this section to interests in partnerships, corporations, and trusts**

This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in section 2057(e)(3).

**(d) Cross reference**

**For executor's right to be furnished on request a statement regarding any valuation made by the Secretary within the gross estate, see section 7517.**

(Aug. 16, 1954, ch. 736, 68A Stat. 380; Pub. L. 87-834, §18(a)(1), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, §2008(a)(2)(A), Oct. 4, 1976, 90 Stat. 1891; Pub. L. 105-34, title V, §508(a), Aug. 5, 1997, 111 Stat. 857; Pub. L. 105-206, title VI, §6007(g), July 22, 1998, 112 Stat. 810; Pub. L. 105-277, div. J, title IV, §4006(c)(3), Oct. 21, 1998, 112 Stat. 2681-913; Pub. L. 107-16, title V, §551(a), (b), June 7, 2001, 115 Stat. 86.)

**AMENDMENT OF SECTION**

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

**AMENDMENTS**

2001—Subsec. (c)(2). Pub. L. 107-16, §§551(b), 901, temporarily inserted at end “The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).” See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(8)(A)(i). Pub. L. 107-16, §§551(a), 901, temporarily amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “which is located—

“(I) in or within 25 miles of an area which, on the date of the decedent's death, is a metropolitan area (as defined by the Office of Management and Budget),

“(II) in or within 25 miles of an area which, on the date of the decedent's death, is a national park or wilderness area designated as part of the National Wilderness Preservation System (unless it is determined by the Secretary that land in or within 25 miles of such a park or wilderness area is not under significant development pressure), or

“(III) in or within 10 miles of an area which, on the date of the decedent's death, is an Urban National Forest (as designated by the Forest Service).”

See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (c)(6). Pub. L. 105-206, §6007(g)(2), substituted “on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return.” for “on the return of the tax imposed by section 2001.”

Subsec. (c)(9). Pub. L. 105-206, §6007(g)(1), added par. (9). Former par. (9) redesignated (10).

Subsec. (c)(10). Pub. L. 105-277, §4006(c)(3), substituted “section 2057(e)(3)” for “section 2033A(e)(3).”

Pub. L. 105-206, §6007(g)(1), redesignated par. (9) as (10).

1997—Subsecs. (c), (d). Pub. L. 105-34 added subsec. (c) and redesignated former subsec. (c) as (d).

1976—Subsec. (c). Pub. L. 94-455 added subsec. (c).

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside the United States.

**EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT**

Pub. L. 107-16, title V, §551(c), June 7, 2001, 115 Stat. 86, provided that: “The amendments made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2000.”

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-34 applicable to estates of decedents dying after Dec. 31, 1997, see section 508(e)(1) of Pub. L. 105-34, set out as a note under section 1014 of this title.

**EFFECTIVE DATE OF 1962 AMENDMENT**

Section 18(b) of Pub. L. 87-834 provided that:

“(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section and sections 2033, 2034, 2035, 2036, 2037, 2038, 2040, and 2041 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Oct. 16, 1962].

“(2) In the case of a decedent dying after the date of the enactment of this Act [Oct. 16, 1962] and before July 1, 1964, the value of real property situated outside of the United States shall not be included in the gross estate (as defined in section 2031(a)) of the decedent—

“(A) under section 2033, 2034, 2035(a), 2036(a), 2037(a), or 2038(a) to the extent the real property, or the decedent's interest in it, was acquired by the decedent before February 1, 1962;

“(B) under section 2040 to the extent such property or interest was acquired by the decedent before Feb-

ruary 1, 1962, or was held by the decedent and the survivor in a joint tenancy or tenancy by the entirety before February 1, 1962; or

“(C) under section 2041(a) to the extent that before February 1, 1962, such property or interest was subject to a general power of appointment (as defined in section 2041) possessed by the decedent.

In the case of real property, or an interest therein, situated outside of the United States (including a general power of appointment in respect of such property or interest, and including property held by the decedent and the survivor in a joint tenancy or tenancy by the entirety) which was acquired by the decedent after January 31, 1962, by gift within the meaning of section 2511, or from a prior decedent by devise or inheritance, or by reason of death, form of ownership, or other conditions (including the exercise or nonexercise of a power of appointment), for purposes of this paragraph such property or interest therein shall be deemed to have been acquired by the decedent before February 1, 1962, if before that date the donor or prior decedent had acquired the property or his interest therein or had possessed a power of appointment in respect of the property or interest.”

## § 2032. Alternate valuation

### (a) General

The value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date 6 months after the decedent's death.

(3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

### (b) Special rules

No deduction under this chapter of any item shall be allowed if allowance for such items is in effect given by the alternate valuation provided by this section. Wherever in any other subsection or section of this chapter reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this section, then—

(1) for purposes of the charitable deduction under section 2055 or 2106(a)(2), any bequest, legacy, devise, or transfer enumerated therein, and

(2) for the purpose of the marital deduction under section 2056, any interest in property passing to the surviving spouse,

shall be valued as of the date of the decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date 6 months after the decedent's death (substituting, in the case of

property distributed by the executor or trustee, or sold, exchanged, or otherwise disposed of, during such 6-month period, the date thereof).

### (c) Election must decrease gross estate and estate tax

No election may be made under this section with respect to an estate unless such election will decrease—

(1) the value of the gross estate, and

(2) the sum of the tax imposed by this chapter and the tax imposed by chapter 13 with respect to property includible in the decedent's gross estate (reduced by credits allowable against such taxes).

### (d) Election

#### (1) In general

The election provided for in this section shall be made by the executor on the return of the tax imposed by this chapter. Such election, once made, shall be irrevocable.

#### (2) Exception

No election may be made under this section if such return is filed more than 1 year after the time prescribed by law (including extensions) for filing such return.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 91-614, title I, §101(a), Dec. 31, 1970, 84 Stat. 1836; Pub. L. 98-369, div. A, title X, §§1023(a), 1024(a), July 18, 1984, 98 Stat. 1030; Pub. L. 99-514, title XIV, §1432(c)(1), Oct. 22, 1986, 100 Stat. 2730.)

#### AMENDMENTS

1986—Subsec. (c)(2). Pub. L. 99-514 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “the amount of the tax imposed by this chapter (reduced by credits allowable against such tax).”

1984—Subsec. (c). Pub. L. 98-369, §1023(a), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-369, §1024(a), substituted “Election” for “Time of election” in heading, designated existing text as par. (1), inserted heading “In general”, substituted “shall be made by the executor on the return of the tax imposed by this chapter” for “shall be exercised by the executor on his return if filed within the time prescribed by law or before the expiration of any extension of time granted pursuant to law for the filing of the return”, inserted sentence providing that an election, once made, is irrevocable, and added par. (2).

Pub. L. 98-369, §1023(a), redesignated subsec. (c) as (d). 1970—Pub. L. 91-614 substituted “6 months” for “1 year” in four places and substituted “6-month” for “1-year”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as an Effective Date note under section 2601 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 1023(b) of Pub. L. 98-369 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [July 18, 1984].”

Section 1024(b) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to es-



tates of decedents dying after the date of the enactment of this Act [July 18, 1984].

“(2) TRANSITIONAL RULE.—In the case of an estate of a decedent dying before the date of the enactment of this Act [July 18, 1984] if—

“(A) a credit or refund of the tax imposed by chapter 11 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is not prevented on the date of the enactment of this Act by the operation of any law or rule of law,

“(B) the election under section 2032 of the Internal Revenue Code of 1986 would have met the requirements of such section (as amended by this section and section 1023) had the decedent died after the date of enactment of this Act, and

“(C) a claim for credit or refund of such tax with respect to such estate is filed not later than the 90th day after the date of the enactment of this Act, then such election shall be treated as a valid election under such section 2032. The statutory period for the assessment of any deficiency which is attributable to an election under this paragraph shall not expire before the close of the 2-year period beginning on the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Section 101(j) of Pub. L. 91-614 provided that: “The amendments made by this section [enacting section 6905 of this title, amending this section and sections 1223, 2055, 2204, 6040, 6075, 6091, 6161, 6314, 6324, and 6504 of this title, and enacting provisions set out as notes under this section and sections 2204 and 6905 of this title] (other than subsection (f)) [amending sections 2204 and 6905 of this title] shall apply with respect to decedents dying after December 31, 1970.”

### § 2032A. Valuation of certain farm, etc., real property

#### (a) Value based on use under which property qualifies

##### (1) General rule

If—

(A) the decedent was (at the time of his death) a citizen or resident of the United States, and

(B) the executor elects the application of this section and files the agreement referred to in subsection (d)(2),

then, for purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (b), as qualified real property.

##### (2) Limitation on aggregate reduction in fair market value

The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed \$750,000.

##### (3) Inflation adjustment

In the case of estates of decedents dying in a calendar year after 1998, the \$750,000 amount contained in paragraph (2) shall be increased by an amount equal to—

(A) \$750,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting “calendar year 1997” for “calendar year 1992” in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such

amount shall be rounded to the next lowest multiple of \$10,000.

#### (b) Qualified real property

##### (1) In general

For purposes of this section, the term “qualified real property” means real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent’s death, was being used for a qualified use by the decedent or a member of the decedent’s family, but only if—

(A) 50 percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which—

(i) on the date of the decedent’s death, was being used for a qualified use by the decedent or a member of the decedent’s family, and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent.

(B) 25 percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of subparagraphs (A)(i) and (C),

(C) during the 8-year period ending on the date of the decedent’s death there have been periods aggregating 5 years or more during which—

(i) such real property was owned by the decedent or a member of the decedent’s family and used for a qualified use by the decedent or a member of the decedent’s family, and

(ii) there was material participation by the decedent or a member of the decedent’s family in the operation of the farm or other business, and

(D) such real property is designated in the agreement referred to in subsection (d)(2).

##### (2) Qualified use

For purposes of this section, the term “qualified use” means the devotion of the property to any of the following:

(A) use as a farm for farming purposes, or

(B) use in a trade or business other than the trade or business of farming.

##### (3) Adjusted value

For purposes of paragraph (1), the term “adjusted value” means—

(A) in the case of the gross estate, the value of the gross estate for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction under paragraph (4) of section 2053(a), or

(B) in the case of any real or personal property, the value of such property for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction in respect of such property under paragraph (4) of section 2053(a).

**(4) Decedents who are retired or disabled****(A) In general**

If, on the date of the decedent's death, the requirements of paragraph (1)(C)(ii) with respect to the decedent for any property are not met, and the decedent—

- (i) was receiving old-age benefits under title II of the Social Security Act for a continuous period ending on such date, or
- (ii) was disabled for a continuous period ending on such date,

then paragraph (1)(C)(ii) shall be applied with respect to such property by substituting “the date on which the longer of such continuous periods began” for “the date of the decedent's death” in paragraph (1)(C).

**(B) Disabled defined**

For purposes of subparagraph (A), an individual shall be disabled if such individual has a mental or physical impairment which renders him unable to materially participate in the operation of the farm or other business.

**(C) Coordination with recapture**

For purposes of subsection (c)(6)(B)(i), if the requirements of paragraph (1)(C)(ii) are met with respect to any decedent by reason of subparagraph (A), the period ending on the date on which the continuous period taken into account under subparagraph (A) began shall be treated as the period immediately before the decedent's death.

**(5) Special rules for surviving spouses****(A) In general**

If property is qualified real property with respect to a decedent (hereinafter in this paragraph referred to as the “first decedent”) and such property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, for purposes of applying this subsection and subsection (c) in the case of the estate of such surviving spouse, active management of the farm or other business by the surviving spouse shall be treated as material participation by such surviving spouse in the operation of such farm or business.

**(B) Special rule**

For the purposes of subparagraph (A), the determination of whether property is qualified real property with respect to the first decedent shall be made without regard to subparagraph (D) of paragraph (1) and without regard to whether an election under this section was made.

**(C) Coordination with paragraph (4)**

In any case in which to do so will enable the requirements of paragraph (1)(C)(ii) to be met with respect to the surviving spouse, this subsection and subsection (c) shall be applied by taking into account any application of paragraph (4).

**(c) Tax treatment of dispositions and failures to use for qualified use****(1) Imposition of additional estate tax**

If, within 10 years after the decedent's death and before the death of the qualified heir—

(A) the qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his family), or

(B) the qualified heir ceases to use for the qualified use the qualified real property which was acquired (or passed) from the decedent,

then, there is hereby imposed an additional estate tax.

**(2) Amount of additional tax****(A) In general**

The amount of the additional tax imposed by paragraph (1) with respect to any interest shall be the amount equal to the lesser of—

- (i) the adjusted tax difference attributable to such interest, or
- (ii) the excess of the amount realized with respect to the interest (or, in any case other than a sale or exchange at arm's length, the fair market value of the interest) over the value of the interest determined under subsection (a).

**(B) Adjusted tax difference attributable to interest**

For purposes of subparagraph (A), the adjusted tax difference attributable to an interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under subparagraph (C)) as—

- (i) the excess of the value of such interest for purposes of this chapter (determined without regard to subsection (a)) over the value of such interest determined under subsection (a), bears to
- (ii) a similar excess determined for all qualified real property.

**(C) Adjusted tax difference with respect to the estate**

For purposes of subparagraph (B), the term “adjusted tax difference with respect to the estate” means the excess of what would have been the estate tax liability but for subsection (a) over the estate tax liability. For purposes of this subparagraph, the term “estate tax liability” means the tax imposed by section 2001 reduced by the credits allowable against such tax.

**(D) Partial dispositions**

For purposes of this paragraph, where the qualified heir disposes of a portion of the interest acquired by (or passing to) such heir (or a predecessor qualified heir) or there is a cessation of use of such a portion—

- (i) the value determined under subsection (a) taken into account under subparagraph (A)(ii) with respect to such portion shall be its pro rata share of such value of such interest, and
- (ii) the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this subsection with respect to all prior transactions involving portions of such interest.

**(E) Special rule for disposition of timber**

In the case of qualified woodland to which an election under subsection (e)(13)(A) applies, if the qualified heir disposes of (or severs) any standing timber on such qualified woodland—

(i) such disposition (or severance) shall be treated as a disposition of a portion of the interest of the qualified heir in such property, and

(ii) the amount of the additional tax imposed by paragraph (1) with respect to such disposition shall be an amount equal to the lesser of—

(I) the amount realized on such disposition (or, in any case other than a sale or exchange at arm's length, the fair market value of the portion of the interest disposed or severed), or

(II) the amount of additional tax determined under this paragraph (without regard to this subparagraph) if the entire interest of the qualified heir in the qualified woodland had been disposed of, less the sum of the amount of the additional tax imposed with respect to all prior transactions involving such woodland to which this subparagraph applied.

For purposes of the preceding sentence, the disposition of a right to sever shall be treated as the disposition of the standing timber. The amount of additional tax imposed under paragraph (1) in any case in which a qualified heir disposes of his entire interest in the qualified woodland shall be reduced by any amount determined under this subparagraph with respect to such woodland.

**(3) Only 1 additional tax imposed with respect to any 1 portion**

In the case of an interest acquired from (or passing from) any decedent, if subparagraph (A) or (B) of paragraph (1) applies to any portion of an interest, subparagraph (B) or (A), as the case may be, of paragraph (1) shall not apply with respect to the same portion of such interest.

**(4) Due date**

The additional tax imposed by this subsection shall become due and payable on the day which is 6 months after the date of the disposition or cessation referred to in paragraph (1).

**(5) Liability for tax; furnishing of bond**

The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest unless the heir has furnished bond which meets the requirements of subsection (e)(11).

**(6) Cessation of qualified use**

For purposes of paragraph (1)(B), real property shall cease to be used for the qualified use if—

(A) such property ceases to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the property qualified under subsection (b), or

(B) during any period of 8 years ending after the date of the decedent's death and

before the date of the death of the qualified heir, there had been periods aggregating more than 3 years during which—

(i) in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business, and

(ii) in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

**(7) Special rules****(A) No tax if use begins within 2 years**

If the date on which the qualified heir begins to use the qualified real property (hereinafter in this subparagraph referred to as the commencement date) is before the date 2 years after the decedent's death—

(i) no tax shall be imposed under paragraph (1) by reason of the failure by the qualified heir to so use such property before the commencement date, and

(ii) the 10-year period under paragraph (1) shall be extended by the period after the decedent's death and before the commencement date.

**(B) Active management by eligible qualified heir treated as material participation**

For purposes of paragraph (6)(B)(ii), the active management of a farm or other business by—

(i) an eligible qualified heir, or

(ii) a fiduciary of an eligible qualified heir described in clause (ii) or (iii) of subparagraph (C),

shall be treated as material participation by such eligible qualified heir in the operation of such farm or business. In the case of an eligible qualified heir described in clause (ii), (iii), or (iv) of subparagraph (C), the preceding sentence shall apply only during periods during which such heir meets the requirements of such clause.

**(C) Eligible qualified heir**

For purposes of this paragraph, the term "eligible qualified heir" means a qualified heir who—

(i) is the surviving spouse of the decedent,

(ii) has not attained the age of 21,

(iii) is disabled (within the meaning of subsection (b)(4)(B)), or

(iv) is a student.

**(D) Student**

For purposes of subparagraph (C), an individual shall be treated as a student with respect to periods during any calendar year if (and only if) such individual is a student (within the meaning of section 152(f)(2)) for such calendar year.

**(E) Certain rents treated as qualified use**

For purposes of this subsection, a surviving spouse or lineal descendant of the decedent

dent shall not be treated as failing to use qualified real property in a qualified use solely because such spouse or descendant rents such property to a member of the family of such spouse or descendant on a net cash basis. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

**(8) Qualified conservation contribution is not a disposition**

A qualified conservation contribution (as defined in section 170(h)) by gift or otherwise shall not be deemed a disposition under subsection (c)(1)(A).

**(d) Election; agreement**

**(1) Election**

The election under this section shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

**(2) Agreement**

The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (c) with respect to such property.

**(3) Modification of election and agreement to be permitted**

The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but—

(A) the notice of election, as filed, does not contain all required information, or

(B) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures.

**(e) Definitions; special rules**

For purposes of this section—

**(1) Qualified heir**

The term “qualified heir” means, with respect to any property, a member of the decedent’s family who acquired such property (or to whom such property passed) from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

**(2) Member of family**

The term “member of the family” means, with respect to any individual, only—

(A) an ancestor of such individual,

(B) the spouse of such individual,

(C) a lineal descendant of such individual, of such individual’s spouse, or of a parent of such individual, or

(D) the spouse of any lineal descendant described in subparagraph (C).

For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

**(3) Certain real property included**

In the case of real property which meets the requirements of subparagraph (C) of subsection (b)(1), residential buildings and related improvements on such real property occupied on a regular basis by the owner or lessee of such real property or by persons employed by such owner or lessee for the purpose of operating or maintaining such real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

**(4) Farm**

The term “farm” includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards and woodlands.

**(5) Farming purposes**

The term “farming purposes” means—

(A) cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;

(B) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(C)(i) the planting, cultivating, caring for, or cutting of trees, or

(ii) the preparation (other than milling) of trees for market.

**(6) Material participation**

Material participation shall be determined in a manner similar to the manner used for purposes of paragraph (1) of section 1402(a) (relating to net earnings from self-employment).

**(7) Method of valuing farms**

**(A) In general**

Except as provided in subparagraph (B), the value of a farm for farming purposes shall be determined by dividing—

(i) the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of such farm over the average annual State and local real estate taxes for such comparable land, by

(ii) the average annual effective interest rate for all new Federal Land Bank loans.

For purposes of the preceding sentence, each average annual computation shall be made

on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

**(B) Value based on net share rental in certain cases**

**(i) In general**

If there is no comparable land from which the average annual gross cash rental may be determined but there is comparable land from which the average net share rental may be determined, subparagraph (A)(i) shall be applied by substituting "average annual net share rental" for "average annual gross cash rental".

**(ii) Net share rental**

For purposes of this paragraph, the term "net share rental" means the excess of—

(I) the value of the produce received by the lessor of the land on which such produce is grown, over

(II) the cash operating expenses of growing such produce which, under the lease, are paid by the lessor.

**(C) Exception**

The formula provided by subparagraph (A) shall not be used—

(i) where it is established that there is no comparable land from which the average annual gross cash rental may be determined, or

(ii) where the executor elects to have the value of the farm for farming purposes determined and that there is no comparable land from which the average net share rental may be determined under paragraph (8).

**(8) Method of valuing closely held business interests, etc.**

In any case to which paragraph (7)(A) does not apply, the following factors shall apply in determining the value of any qualified real property:

(A) The capitalization of income which the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors,

(B) The capitalization of the fair rental value of the land for farm land or closely held business purposes,

(C) Assessed land values in a State which provides a differential or use value assessment law for farmland or closely held business,

(D) Comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that non-agricultural use is not a significant factor in the sales price, and

(E) Any other factor which fairly values the farm or closely held business value of the property.

**(9) Property acquired from decedent**

Property shall be considered to have been acquired from or to have passed from the decedent if—

(A) such property is so considered under section 1014(b) (relating to basis of property acquired from a decedent),

(B) such property is acquired by any person from the estate, or

(C) such property is acquired by any person from a trust (to the extent such property is includible in the gross estate of the decedent).

**(10) Community property**

If the decedent and his surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in such property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to such property which is consistent with the result which would have obtained under this section if such property had not been community property.

**(11) Bond in lieu of personal liability**

If the qualified heir makes written application to the Secretary for determination of the maximum amount of the additional tax which may be imposed by subsection (c) with respect to the qualified heir's interest, the Secretary (as soon as possible, and in any event within 1 year after the making of such application) shall notify the heir of such maximum amount. The qualified heir, on furnishing a bond in such amount and for such period as may be required, shall be discharged from personal liability for any additional tax imposed by subsection (c) and shall be entitled to a receipt or writing showing such discharge.

**(12) Active management**

The term "active management" means the making of the management decisions of a business (other than the daily operating decisions).

**(13) Special rules for woodlands**

**(A) In general**

In the case of any qualified woodland with respect to which the executor elects to have this subparagraph apply, trees growing on such woodland shall not be treated as a crop.

**(B) Qualified woodland**

The term "qualified woodland" means any real property which—

(i) is used in timber operations, and

(ii) is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

**(C) Timber operations**

The term "timber operations" means—

(i) the planting, cultivating, caring for, or cutting of trees, or

(ii) the preparation (other than milling) of trees for market.

**(D) Election**

An election under subparagraph (A) shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

**(14) Treatment of replacement property acquired in section 1031 or 1033 transactions**

**(A) In general**

In the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of his family shall be treated as a period during which there was such ownership, use, or material participation (as the case may be) with respect to the qualified replacement property.

**(B) Limitation**

Subparagraph (A) shall not apply to the extent that the fair market value of the qualified replacement property (as of the date of its acquisition) exceeds the fair market value of the replaced property (as of the date of its disposition).

**(C) Definitions**

For purposes of this paragraph—

**(i) Qualified replacement property**

The term “qualified replacement property” means any real property which is—

- (I) acquired in an exchange which qualifies under section 1031, or
- (II) the acquisition of which results in the nonrecognition of gain under section 1033.

Such term shall only include property which is used for the same qualified use as the replaced property was being used before the exchange.

**(ii) Replaced property**

The term “replaced property” means—

- (I) the property transferred in the exchange which qualifies under section 1031, or
- (II) the property compulsorily or involuntarily converted (within the meaning of section 1033).

**(f) Statute of limitations**

If qualified real property is disposed of or ceases to be used for a qualified use, then—

(1) the statutory period for the assessment of any additional tax under subsection (c) attributable to such disposition or cessation shall not expire before the expiration of 3 years from the date the Secretary is notified (in such manner as the Secretary may by regulations prescribe) of such disposition or cessation (or if later in the case of an involuntary conversion or exchange to which subsection (h) or (i) applies, 3 years from the date the Secretary is notified of the replacement of the converted property or of an intention not to replace or of the exchange of property), and

(2) such additional tax may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

**(g) Application of this section and section 6324B to interests in partnerships, corporations, and trusts**

The Secretary shall prescribe regulations setting forth the application of this section and

section 6324B in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business (within the meaning of paragraph (1) of section 6166(b)). For purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs shall be treated as a present interest.

**(h) Special rules for involuntary conversions of qualified real property**

**(1) Treatment of converted property**

**(A) In general**

If there is an involuntary conversion of an interest in qualified real property—

- (i) no tax shall be imposed by subsection (c) on such conversion if the cost of the qualified replacement property equals or exceeds the amount realized on such conversion, or
- (ii) if clause (i) does not apply, the amount of the tax imposed by subsection (c) on such conversion shall be the amount determined under subparagraph (B).

**(B) Amount of tax where there is not complete reinvestment**

The amount determined under this subparagraph with respect to any involuntary conversion is the amount of the tax which (but for this subsection) would have been imposed on such conversion reduced by an amount which—

- (i) bears the same ratio to such tax, as
- (ii) the cost of the qualified replacement property bears to the amount realized on the conversion.

**(2) Treatment of replacement property**

For purposes of subsection (c)—

(A) any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was involuntarily converted; except that with respect to such qualified replacement property the 10-year period under paragraph (1) of subsection (c) shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i), during which the qualified heir was allowed to replace the qualified real property,

(B) any tax imposed by subsection (c) on the involuntary conversion shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (6) of subsection (c) shall be applied—

- (i) by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property, and
- (ii) by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

**(3) Definitions and special rules**

For purposes of this subsection—

**(A) Involuntary conversion**

The term “involuntary conversion” means a compulsory or involuntary conversion within the meaning of section 1033.

**(B) Qualified replacement property**

The term “qualified replacement property” means—

(i) in the case of an involuntary conversion described in section 1033(a)(1), any real property into which the qualified real property is converted, or

(ii) in the case of an involuntary conversion described in section 1033(a)(2), any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(B) for purposes of replacing the qualified real property.

Such term only includes property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the qualified real property qualified under subsection (a).

**(4) Certain rules made applicable**

The rules of the last sentence of section 1033(a)(2)(A) shall apply for purposes of paragraph (3)(B)(ii).

**(i) Exchanges of qualified real property****(1) Treatment of property exchanged****(A) Exchanges solely for qualified exchange property**

If an interest in qualified real property is exchanged solely for an interest in qualified exchange property in a transaction which qualifies under section 1031, no tax shall be imposed by subsection (c) by reason of such exchange.

**(B) Exchanges where other property received**

If an interest in qualified real property is exchanged for an interest in qualified exchange property and other property in a transaction which qualifies under section 1031, the amount of the tax imposed by subsection (c) by reason of such exchange shall be the amount of tax which (but for this subparagraph) would have been imposed on such exchange under subsection (c)(1), reduced by an amount which—

- (i) bears the same ratio to such tax, as
- (ii) the fair market value of the qualified exchange property bears to the fair market value of the qualified real property exchanged.

For purposes of clause (ii) of the preceding sentence, fair market value shall be determined as of the time of the exchange.

**(2) Treatment of qualified exchange property**

For purposes of subsection (c)—

(A) any interest in qualified exchange property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was exchanged,

(B) any tax imposed by subsection (c) by reason of the exchange shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (6) of subsection (c) shall be applied by treating material participation with respect to the exchanged property as material participation with respect to the qualified exchange property.

**(3) Qualified exchange property**

For purposes of this subsection, the term “qualified exchange property” means real property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the real property exchanged therefor originally qualified under subsection (a).

(Added Pub. L. 94-455, title XX, §2003(a), Oct. 4, 1976, 90 Stat. 1856; amended Pub. L. 95-472, §4(a), (c), Oct. 17, 1978, 92 Stat. 1334, 1336; Pub. L. 95-600, title VII, §702(d)(1), (2), (4), (5), Nov. 6, 1978, 92 Stat. 2928, 2929; Pub. L. 97-34, title IV, §421(a)-(d)(2)(A), (e), (f), (h)-(j)(2)(A), (3), (4), Aug. 13, 1981, 95 Stat. 306-313; Pub. L. 97-448, title I, §104(b)(1), (2), Jan. 12, 1983, 96 Stat. 2381; Pub. L. 98-369, div. A, title X, §1025(a), July 18, 1984, 98 Stat. 1030; Pub. L. 99-514, title I, §104(b)(3), Oct. 22, 1986, 100 Stat. 2105; Pub. L. 100-647, title VI, §6151(a), Nov. 10, 1988, 102 Stat. 3724; Pub. L. 101-508, title XI, §11802(f)(5), Nov. 5, 1990, 104 Stat. 1388-530; Pub. L. 105-34, title V, §§501(b), 504(a), (b), 508(c), title XIII, §1313(a), Aug. 5, 1997, 111 Stat. 845, 853, 854, 860, 1045; Pub. L. 108-311, title II, §207(22), Oct. 4, 2004, 118 Stat. 1178.)

**ADJUSTMENT OF DECREASE IN VALUE OF QUALIFIED REAL PROPERTY FOR DECEDENTS DYING IN CALENDAR YEAR 2007**

*For adjustment of aggregate decrease in value of qualified real property resulting from election under this section for estates of decedents dying in calendar year 2007, see section 3.31 of Revenue Procedure 2006-53, set out as a note under section 1 of this title.*

**REFERENCES IN TEXT**

The Social Security Act, referred to in subsec. (b)(4)(A)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

**AMENDMENTS**

2004—Subsec. (c)(7)(D). Pub. L. 108-311 substituted “section 152(f)(2)” for “section 151(c)(4)”.

1997—Subsec. (a)(3). Pub. L. 105-34, §501(b), added par. (3).

Subsec. (b)(5)(A). Pub. L. 105-34, §504(b), struck out at end “For purposes of subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse’s family on a net cash basis.”

Subsec. (c)(7)(E). Pub. L. 105-34, §504(a), added subpar. (E).

Subsec. (c)(8). Pub. L. 105-34, §508(c), added par. (8).

Subsec. (d)(3). Pub. L. 105-34, §1313(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “The Secretary shall prescribe procedures which provide that in any case in which—

“(A) the executor makes an election under paragraph (1) within the time prescribed for filing such election, and

“(B) substantially complies with the regulations prescribed by the Secretary with respect to such election, but—

“(i) the notice of election, as filed, does not contain all required information, or

“(ii) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the

agreement does not contain all required information, the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or agreements.”

1990—Subsec. (a)(2). Pub. L. 101-508 amended par. (2) generally, substituting present provisions for provisions which established graduated increase in applicable limit on aggregate reduction in fair market value from \$600,000 in the case of decedents dying in 1981 to \$750,000 in the case of decedents dying in 1983 or thereafter.

1988—Subsec. (b)(5)(A). Pub. L. 100-647 inserted at end “For purposes of subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse’s family on a net cash basis.”

1986—Subsec. (c)(7)(D). Pub. L. 99-514 substituted “section 151(c)(4)” for “section 151(e)(4)”.

1984—Subsec. (d)(3). Pub. L. 98-369 added par. (3).

1983—Subsec. (b)(5)(C). Pub. L. 97-448, § 104(b)(1), added subpar. (C).

Subsec. (i)(1)(B)(ii). Pub. L. 97-448, § 104(b)(2)(A), substituted “the qualified exchange property” for “the other property”.

Subsec. (i)(3). Pub. L. 97-448, § 104(b)(2)(B), substituted “subparagraph (A) or (B)” for “subparagraph (A), (B), or (C)”.

1981—Subsec. (a)(2). Pub. L. 97-34, § 421(a), substituted “Limit on aggregate reduction in fair market value” for “Limitation” in heading “shall not exceed the applicable limit set forth in the following table:” for “shall not exceed \$500,000” in text, and inserted table.

Subsec. (b)(1). Pub. L. 97-34, § 421(b)(1), substituted “qualified use by the decedent or a member of the decedent’s family” for “qualified use” in provision preceding subpar. (A), and in subpars. (A)(i) and (C)(i).

Subsec. (b)(4), (5). Pub. L. 97-34, § 421(b)(2), added pars. (4) and (5).

Subsec. (c)(1). Pub. L. 97-34, § 421(c)(1)(A), substituted “10 years” for “15 years”.

Subsec. (c)(2)(E). Pub. L. 97-34, § 421(h)(2), added subpar. (E).

Subsec. (c)(3). Pub. L. 97-34, § 421(c)(1)(B)(i), redesignated par. (4) as (3) and struck out former par. (3), which provided for a phaseout of additional tax between the 10th and 15th years.

Subsec. (c)(4), (5). Pub. L. 97-34, § 421(c)(1)(B)(i), redesignated pars. (5) and (6) as (4) and (5), respectively. Former par. (4) redesignated (3).

Subsec. (c)(6). Pub. L. 97-34, § 421(c)(2)(B)(ii), in subpar. (B) substituted “more than 3 years” for “3 years or more”.

Pub. L. 97-34, § 421(c)(1)(B)(i), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (c)(7). Pub. L. 97-34, § 421(c)(1)(B)(i), (2)(A), added par. (7). Former par. (7) redesignated (6).

Subsec. (d)(1). Pub. L. 97-34, § 421(j)(3), substituted “The election under this section shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.” for “The election under this section shall be made not later than the time prescribed by section 6075(a) for filing the return of tax imposed by section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe.”

Subsec. (e)(2). Pub. L. 97-34, § 421(i), substituted provisions designated subpars. (A) through (D) for “such individual’s ancestor or lineal descendant, a lineal descendant of a grandparent of such individual, the spouse of such individual, or the spouse of any such descendant”.

Subsec. (e)(7). Pub. L. 97-34, § 421(f), added subpar. (B), redesignated former subpar. (B) as (C), and inserted “and that there is no comparable land from which the average net share rental may be determined” after “determined” in subpar. (C), without specifying whether

the language was to be inserted in cl. (i) or (ii) of subpar. (C). In view of H. Rept. No. 97-201, 97th Cong., July 14, 1981, p. 492, the language was inserted in cl. (ii) as the probable intent of Congress.

Subsec. (e)(9). Pub. L. 97-34, § 421(j)(2)(A), struck out from subpar. (B) “in satisfaction of the right of such person to a pecuniary bequest” after “from the estate” and in subpar. (C) substituted “(to the extent such property is includible in the gross estate of the decedent)” for “in satisfaction of a right (which such person has by reason of the death of the decedent) to receive from the trust a specific dollar amount which is the equivalent of a pecuniary bequest”.

Subsec. (e)(12). Pub. L. 97-34, § 421(c)(2)(B)(i), added par. (12).

Subsec. (e)(13), (14). Pub. L. 97-34, § 421(h)(1), (j)(4), added pars. (13) and (14).

Subsec. (f)(1). Pub. L. 97-34, § 421(e)(2), substituted “to which subsection (h)” for “to which an election under subsection (h)”.

Pub. L. 97-34, § 421(d)(2)(A), substituted “conversion or exchange”, “(h) or (i)”, and “replace or of the exchange of property” for “conversion”, “(h)”, and “replace”.

Subsec. (g). Pub. L. 97-34, § 421(j)(1), inserted provision that for purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs shall be treated as a present interest.

Subsec. (h)(1)(A). Pub. L. 97-34, § 421(e)(1)(A), struck out “and the qualified heir makes an election under this subsection” after “qualified real property”.

Subsec. (h)(2)(A). Pub. L. 97-34, § 421(c)(1)(B)(ii), substituted “; except that” for “, except that” and “the 10-year period” for “the 15-year period”, deleted cl. (i) designation, and struck out cl. (ii), which provided the phaseout period under par. (3) of subsec. (c) be appropriately adjusted to take into account the extension referred to in cl. (i).

Subsec. (h)(2)(C). Pub. L. 97-34, § 421(c)(1)(B)(iii), substituted “(6)” for “(7)” in provisions preceding cl. (i).

Subsec. (h)(5). Pub. L. 97-34, § 421(e)(1)(B), struck out par. (5) which provided for making a subsec. (h) election at such time and in such manner as the Secretary may by regulations prescribe.

Subsec. (i). Pub. L. 97-34, § 421(d)(1), added subsec. (i). 1978—Subsec. (b)(1). Pub. L. 95-600, § 702(d)(1), inserted “which was acquired from or passed from the decedent to a qualified heir of the decedent and” after “located in the United States”.

Subsec. (c)(6). Pub. L. 95-600, § 702(d)(5)(A), inserted “unless the heir has furnished bond which meets the requirements of subsection (e)(11)” after “respect to his interest”.

Subsec. (e)(9). Pub. L. 95-600, § 702(d)(2), added par. (9).

Subsec. (e)(10). Pub. L. 95-600, § 702(d)(4), added par. (10).

Subsec. (e)(11). Pub. L. 95-600, § 702(d)(5)(B), added par. (11).

Subsec. (f)(1). Pub. L. 95-472, § 4(c), inserted provision relating to the expiration of the statutory period for the assessment of additional tax due under subsec. (c) in the case of an involuntary conversion to which an election under subsec. (h) is applicable.

Subsec. (h). Pub. L. 95-472, § 4(a), added subsec. (h).

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108-311, set out as a note under section 2 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 501(b) of Pub. L. 105-34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105-34, set out as a note under section 2001 of this title.

Section 504(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this sec-



tion] shall apply with respect to leases entered into after December 31, 1976.”

Amendment by section 508(c) of Pub. L. 105-34 applicable to easements granted after Dec. 31, 1997, see section 508(e)(2) of Pub. L. 105-34, set out as a note under section 170 of this title.

Section 1313(b) of Pub. L. 105-34 provided that: “The amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 6151(b) of Pub. L. 100-647 provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply with respect to rentals occurring after December 31, 1976.

“(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of the amendment made by subsection (a) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore is filed before the date 1 year after the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 1025(b) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to estates of decedents dying after December 31, 1976.

“(2) REFUND OR CREDIT OF OVERPAYMENT BARRED BY STATUTE OF LIMITATIONS.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of the enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period.”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Section 421(k) of Pub. L. 97-34, as amended by Pub. L. 97-448, title I, § 104(b)(4), Jan. 12, 1983, 96 Stat. 2382; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 1016, 1040, and 6324B of this title] shall apply with respect to the estates of decedents dying after December 31, 1981.

“(2) INCREASE IN LIMITATION.—The amendment made by subsection (a) [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1980.

“(3) SUBSECTION (d).—The amendments made by subsection (d) [amending this section and section 6324B of this title] shall apply with respect to exchanges after December 31, 1981.

“(4) SUBSECTION (e).—The amendments made by subsection (e) [amending this section] shall apply with re-

spect to involuntary conversions after December 31, 1981.

“(5) CERTAIN AMENDMENTS MADE RETROACTIVE TO 1976.—

“(A) IN GENERAL.—The amendments made by subsections (b)(1), (j)(1), and (j)(2) [amending this section and section 1040 of this title] and the provisions of subparagraph (A) of section 2032A(c)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c)(2)) shall apply with respect to the estates of decedents dying after December 31, 1976.

“(B) TIMELY ELECTION REQUIRED.—Subparagraph (A) shall only apply in the case of an estate if a timely election under section 2032A was made with respect to such estate. If the estate of any decedent would not qualify under section 2032A of the Internal Revenue Code of 1986 but for the amendments described in subparagraph (A) and the time for making an election under section 2032A with respect to such estate would (but for this sentence) expire after July 28, 1980, the time for making such election shall not expire before the close of February 16, 1982.

“(C) REINSTATEMENT OF ELECTIONS.—If any election under section 2032A was revoked before the date of the enactment of this Act [Aug. 13, 1981], such election may be reinstated at any time before February 17, 1982.

“(D) STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Aug. 13, 1981] (or at any time before February 17, 1982) the making of a credit or refund of any overpayment of tax resulting from the amendments described in subparagraph (A) is barred by any law or rule of law, such credit or refund shall nevertheless be made if claim therefor is made before February 17, 1982.”

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Section 702(d)(6) of Pub. L. 95-600 provided that: “The amendments made by this subsection [amending this section and section 1040 of this title] shall apply to the estates of decedents dying after December 31, 1976.”

Amendment of section by Pub. L. 95-472 applicable with respect to involuntary conversions after Dec. 31, 1976, see section 4(d) of Pub. L. 95-472, set out as a note under section 1016 of this title.

#### EFFECTIVE DATE

Section 2003(e) of Pub. L. 94-455 provided that: “The amendments made by this section [enacting this section and section 6324B of this title and amending section 2013 of this title] shall apply to the estates of decedents dying after December 31, 1976.”

#### SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

#### WAIVER OF STATUTE OF LIMITATION FOR TAXES ON CERTAIN FARM VALUATIONS

Pub. L. 107-16, title V, § 581, June 7, 2001, 115 Stat. 93, provided that: “If on the date of the enactment of this Act [June 7, 2001] (or at any time within 1 year after the date of the enactment) a refund or credit of any overpayment of tax resulting from the application of section 2032A(c)(7)(E) of the Internal Revenue Code of 1986 is barred by any law or rule of law, the refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.”

INFORMATION NECESSARY FOR VALID SPECIAL USE  
VALUATION ELECTION

Section 1421 of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, § 1014(f), Nov. 10, 1988, 102 Stat. 3562, provided that:

“(a) IN GENERAL.—In the case of any decedent dying before January 1, 1986, if the executor—

“(1) made an election under section 2032A of the Internal Revenue Code of 1954 [now 1986] on the return of tax imposed by section 2001 of such Code, and

“(2) provided substantially all the information with respect to such election required on such return of tax,

such election shall be a valid election for purposes of section 2032A of such Code.

“(b) EXECUTOR MUST PROVIDE INFORMATION.—An election described in subsection (a) shall not be valid if the Secretary of the Treasury or his delegate after the date of the enactment of this Act [Oct. 22, 1986] requests information from the executor with respect to such election and the executor does not provide such information within 90 days of receipt of such request.

“(c) EFFECTIVE DATE.—The provisions of this section shall not apply to the estate of any decedent if before the date of the enactment of this Act [Oct. 22, 1986] the statute of limitations has expired with respect to—

“(1) the return of tax imposed by section 2001 of the Internal Revenue Code of 1954 [now 1986], and

“(2) the period during which a claim for credit or refund may be timely filed.

“(d) SPECIAL RULE FOR CERTAIN ESTATE.—Notwithstanding subsection (a)(2), the provisions of this section shall apply to the estate of an individual who died on January 30, 1984, and with respect to which—

“(1) a Federal estate tax return was filed on October 30, 1984, electing current use valuation, and

“(2) the agreement required under section 2032A was filed on November 9, 1984.”

LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND  
PROGRAM

Land diverted from production of agricultural commodities under a 1983 payment-in-kind program to be treated, for purposes of this section, as used during the 1983 crop year by qualified taxpayers in the active conduct of the trade or business of farming, with qualified taxpayers who materially participate in the diversion and devotion to conservation uses under a 1983 payment-in-kind program to be treated as materially participating in the operation of such land during the 1983 crop year, see section 3 of Pub. L. 98-4, set out as a note under section 61 of this title.

**§ 2033. Property in which the decedent had an interest**

The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87-834, § 18(a)(2)(A), Oct. 16, 1962, 76 Stat. 1052.)

AMENDMENTS

1962—Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

**[§ 2033A. Renumbered § 2057]**

**§ 2034. Dower or curtesy interests**

The value of the gross estate shall include the value of all property to the extent of any inter-

est therein of the surviving spouse, existing at the time of the decedent's death as dower or curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87-834, § 18(a)(2)(B), Oct. 16, 1962, 76 Stat. 1052.)

AMENDMENTS

1962—Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

**§ 2035. Adjustments for certain gifts made within 3 years of decedent's death**

**(a) Inclusion of certain property in gross estate**  
If—

(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and

(2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

**(b) Inclusion of gift tax on gifts made during 3 years before decedent's death**

The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

**(c) Other rules relating to transfers within 3 years of death**

**(1) In general**

For purposes of—

(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

(B) section 2032A (relating to special valuation of certain farms, etc., real property), and

(C) subchapter C of chapter 64 (relating to lien for taxes),

the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

**(2) Coordination with section 6166**

An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of subsection (a).

**(3) Marital and small transfers**

Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life insurance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(2)) to file any gift tax return for such year with respect to transfers to such donee.

**(d) Exception**

Subsection (a) and paragraph (1) of subsection (c) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

**(e) Treatment of certain transfers from revocable trusts**

For purposes of this section and section 2038, any transfer from any portion of a trust during any period that such portion was treated under section 676 as owned by the decedent by reason of a power in the grantor (determined without regard to section 672(e)) shall be treated as a transfer made directly by the decedent.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87-834, §18(a)(2)(C), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, §2001(a)(5), Oct. 4, 1976, 90 Stat. 1848; Pub. L. 95-600, title VII, §702(f)(1), Nov. 6, 1978, 92 Stat. 2930; Pub. L. 97-34, title IV, §§403(b)(3)(B), 424(a), Aug. 13, 1981, 95 Stat. 301, 317; Pub. L. 97-448, title I, §104(a)(9), (d)(1)(A), (C), (2), Jan. 12, 1983, 96 Stat. 2381, 2383; Pub. L. 105-34, title XIII, §1310(a), Aug. 5, 1997, 111 Stat. 1043; Pub. L. 106-554, §1(a)(7) [title III, §319(14)], Dec. 21, 2000, 114 Stat. 2763, 2763A-646.)

**AMENDMENTS**

2000—Subsec. (c)(2). Pub. L. 106-554, §1(a)(7) [title III, §319(14)(A)], substituted “subsection (a)” for “paragraph (1)”.

Subsec. (d). Pub. L. 106-554, §1(a)(7) [title III, §319(14)(B)], inserted “and paragraph (1) of subsection (c)” after “Subsection (a)”.

1997—Pub. L. 105-34 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to adjustments for gifts made within 3 years of decedent's death.

1983—Subsec. (b)(2). Pub. L. 97-448, §104(a)(9), substituted “section 6019(2)” for “section 6019(a)(2)”.

Subsec. (d)(2). Pub. L. 97-448, §104(d)(2), inserted “of this subsection and paragraph (2) of subsection (b)” after “Paragraph (1)”, and struck out “2041,” after “2038.”

Subsec. (d)(3)(C), (D). Pub. L. 97-448, §104(d)(1)(C), redesignated subpar. (D) as (C). Former subpar. (C), which referred to section 6166 (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business), was struck out.

Subsec. (d)(4). Pub. L. 97-448, §104(d)(1)(A), added par. (4).

1981—Subsec. (b)(2). Pub. L. 97-34, §403(b)(3)(B), inserted “(other than by reason of section 6019(a)(2))” after “section 6019”.

Subsec. (d). Pub. L. 97-34, §424(a), added subsec. (d).

1978—Subsec. (b). Pub. L. 95-600 substituted in par. (2) provisions relating to gifts for which donee was not required by section 6019 to file gift tax returns for provisions relating to gifts excludable in computing taxable gifts by reason of section 2503(b) and inserted provisions following par. (2) relating to inapplicability of par. (2) to transfers respecting life insurance policies.

1976—Pub. L. 94-455 substituted provisions covering adjustments for gifts made within 3 years of decedent's death for provisions under which transfers by the decedent within 3 years of the decedent's death were

deemed to have been made in contemplation of death and included in the value of the gross estate.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Section 1310(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

**EFFECTIVE DATE OF 1983 AMENDMENT**

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1981 AMENDMENT**

Amendment by section 403(b)(3)(B) of Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97-34, set out as a note under section 2056 of this title.

Section 424(b) of Pub. L. 97-34 provided that: “The amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after December 31, 1981.”

**EFFECTIVE DATE OF 1978 AMENDMENT**

Section 702(f)(2) of Pub. L. 95-600 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to the estates of decedents dying after December 31, 1976, except that it shall not apply to transfers made before January 1, 1977.”

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, but not to transfers made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

**EFFECTIVE DATE OF 1962 AMENDMENT**

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

**TRANSFERS MADE BY DECEDENT DURING 1977; ELECTION AVAILABLE TO EXECUTOR ON OR BEFORE DUE DATE FOR FILING ESTATE TAX RETURN**

Pub. L. 96-222, title I, §107(a)(2)(F), Apr. 1, 1980, 94 Stat. 223, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(i) If the executor elects the benefits of this subparagraph with respect to any estate, section 2035(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to adjustments for gifts made within 3 years of decedent's death) shall be applied with respect to transfers made by the decedent during 1977 as if paragraph (2) of such section 2035(b) read as follows:

“(2) to any gift to a donee made during 1977 to the extent of the amount of such gift which was excludable in computing taxable gifts by reason of section 2503(b) (relating to \$3,000 annual exclusion for purposes of the gift tax) determined without regard to section 2513(a).”

“(ii) The election under clause (i) with respect to any estate shall be made on or before the later of—

“(I) the due date for filing the estate tax return, or

“(II) the day which is 120 days after the date of the enactment of this Act [Apr. 1, 1980].”

**§ 2036. Transfers with retained life estate****(a) General rule**

The value of the gross estate shall include the value of all property to the extent of any inter-

est therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

**(b) Voting rights**

**(1) In general**

For purposes of subsection (a)(1), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation shall be considered to be a retention of the enjoyment of transferred property.

**(2) Controlled corporation**

For purposes of paragraph (1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the 3-year period ending on the date of the decedent's death, the decedent owned (with the application of section 318), or had the right (either alone or in conjunction with any person) to vote, stock possessing at least 20 percent of the total combined voting power of all classes of stock.

**(3) Coordination with section 2035**

For purposes of applying section 2035 with respect to paragraph (1), the relinquishment or cessation of voting rights shall be treated as a transfer of property made by the decedent.

**(c) Limitation on application of general rule**

This section shall not apply to a transfer made before March 4, 1931; nor to a transfer made after March 3, 1931, and before June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516).

(Aug. 16, 1954, ch. 736, 68A Stat. 382; Pub. L. 87-834, §18(a)(2)(D), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, §2009(a), Oct. 4, 1976, 90 Stat. 1893; Pub. L. 95-600, title VII, §702(i)(1), (2), Nov. 6, 1978, 92 Stat. 2931; Pub. L. 100-203, title X, §10402(a), Dec. 22, 1987, 101 Stat. 1330-431; Pub. L. 100-647, title III, §3031(a)(1), (b)-(e), (g), Nov. 10, 1988, 102 Stat. 3634-3638; Pub. L. 101-508, title XI, §11601(a), Nov. 5, 1990, 104 Stat. 1388-490.)

**AMENDMENTS**

1990—Subsecs. (c), (d). Pub. L. 101-508 redesignated subsec. (d) as (c) and struck out former subsec. (c) which enunciated a rule that retention of retained interest would be considered to be a retention of enjoyment of transferred property if a person held a substantial interest in an enterprise, and such person in effect transferred after Dec. 17, 1987, property having a disproportionately large share of the potential appreciation in such person's interest in the enterprise while retaining an interest in the income of, or rights in, the enterprise.

1988—Subsec. (c)(1)(B). Pub. L. 100-647, §3031(e), substituted “an interest” for “a disproportionately large share” after “whole retaining”.

Subsec. (c)(2). Pub. L. 100-647, §3031(g)(1), substituted “consideration furnished by” for “sales to” in heading, and amended text generally. Prior to amendment, text read as follows: “The exception contained in subsection (a) for a bona fide sale shall not apply to a transfer described in paragraph (1) if such transfer is to a member of the transferor's family.”

Subsec. (c)(3)(C). Pub. L. 100-647, §3031(d), substituted “Except as provided in regulations, an” for “An”.

Subsec. (c)(4). Pub. L. 100-647, §3031(a)(1), amended par. (4) generally, substituting provisions relating to treatment of certain transfers for provisions relating to coordination with section 2035.

Subsec. (c)(5). Pub. L. 100-647, §3031(g)(2), amended par. (5) generally, substituting provisions relating to the making of appropriate adjustments in amounts included in gross estate for provisions relating to coordination with section 2043.

Subsec. (c)(6). Pub. L. 100-647, §3031(b), added par. (6). Subsec. (c)(7), (8). Pub. L. 100-647, §3031(b)(c)], added pars. (7) and (8).

1987—Subsecs. (c), (d). Pub. L. 100-203 added subsec. (c) and redesignated former subsec. (c) as (d).

1978—Subsec. (a). Pub. L. 95-600, §702(i)(2), struck out provision following par. (2) relating to the retention of voting rights in retained stock.

Subsecs. (b), (c). Pub. L. 95-600, §702(i)(1), added subsec. (b) and redesignated former subsec. (b) as (c).

1976—Subsec. (a). Pub. L. 94-455 provided that, for purposes of par. (1), the retention of voting rights in retained stock be considered to be a retention of the enjoyment of that stock.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

**EFFECTIVE DATE OF 1990 AMENDMENT**

Section 11601(c) of Pub. L. 101-508 provided that: “The amendments made by this section [amending this section and sections 2207B and 2501 of this title] shall apply in the case of property transferred after December 17, 1987.”

**EFFECTIVE DATE OF 1988 AMENDMENT**

Section 3031(h) of Pub. L. 100-647 provided that:

“(1) IN GENERAL.—Except as provided in this subsection, any amendment made by this section [enacting section 2207B of this title and amending this section and section 2501 of this title] shall take effect as if included in the provisions of the Revenue Act of 1987 [Pub. L. 100-203, title X] to which such amendment relates.

“(2) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and section 2501 of this title] shall apply in cases where the transfer referred to in section 2036(c)(1)(B) of the 1986 Code is on or after June 21, 1988.

“(3) SUBSECTION (f).—If an amount is included in the gross estate of a decedent under section 2036 of the 1986 Code other than solely by reason of section 2036(c) of the 1986 Code, the amendments made by subsection (f) [enacting section 2207B of this title] shall apply to such amount only with respect to property transferred after the date of the enactment of this Act [Nov. 10, 1988].

“(4) CORRECTION PERIOD.—If section 2036(c)(1) of the 1986 Code would (but for this paragraph) apply to any interest arising from a transaction entered into during the period beginning after December 17, 1987, and ending before January 1, 1990, such section shall not apply to such interest if—

“(A) during such period, such actions are taken as are necessary to have such section 2036(c)(1) not apply to such transaction (and any such interest), or

“(B) the original transferor and his spouse on January 1, 1990 (or, if earlier, the date of the original transferor's death), does not hold any interest in the enterprise involved.

“(5) CLARIFICATION OF EFFECTIVE DATE.—For purposes of section 10402(b) of the Revenue Act of 1987 [Pub. L.

100-203, set out as an Effective Date of 1987 Amendment note below], with respect to property transferred on or before December 17, 1987—

“(A) any failure to exercise a right of conversion,

“(B) any failure to pay dividends, and

“(c) [sic] failures to exercise other rights specified in regulations, shall not be treated as a subsequent transfer.”

#### EFFECTIVE DATE OF 1987 AMENDMENT

Section 10402(b) of Pub. L. 100-203 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1987, but only in the case of property transferred after December 17, 1987.” [For clarification of this note, see section 3031(h)(5) of Pub. L. 100-647, set out as an Effective Date of 1988 Amendment note above.]

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(i)(3) of Pub. L. 95-600 provided that: “The amendments made by this subsection [amending this section] shall apply to transfers made after June 22, 1976.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 2009(e)(1) of Pub. L. 94-455 provided that: “The amendment made by subsection (a) [amending this section] shall apply to transfers made after June 22, 1976.”

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

### § 2037. Transfers taking effect at death

#### (a) General rule

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if—

(1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and

(2) the decedent has retained a reversionary interest in the property (but in the case of a transfer made before October 8, 1949, only if such reversionary interest arose by the express terms of the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

#### (b) Special rules

For purposes of this section, the term “reversionary interest” includes a possibility that property transferred by the decedent—

(1) may return to him or his estate, or

(2) may be subject to a power of disposition by him,

but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mor-

talidity and actuarial principles, under regulations prescribed by the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate. Notwithstanding the foregoing, an interest so transferred shall not be included in the decedent's gross estate under this section if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a general power of appointment (as defined in section 2041) which in fact was exercisable immediately before the decedent's death.

(Aug. 16, 1954, ch. 736, 68A Stat. 382; Pub. L. 87-834, §18(a)(2)(E), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

### § 2038. Revocable transfers

#### (a) In general

The value of the gross estate shall include the value of all property—

##### (1) Transfers after June 22, 1936

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3 year period ending on the date of the decedent's death.

##### (2) Transfers on or before June 22, 1936

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power during the 3 year period ending on the date of the decedent's death. Except in the case of transfers made after June 22, 1936, no interest of the decedent

of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph.

**(b) Date of existence of power**

For purposes of this section, the power to alter, amend, revoke, or terminate shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, revocation, or termination takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose, if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(Aug. 16, 1954, ch. 736, 68A Stat. 383; Pub. L. 86-141, §1, Aug. 7, 1959, 73 Stat. 288; Pub. L. 87-834, §18(a)(2)(F), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XIX, §1902(a)(3), title XX, §2001(c)(1)(K), Oct. 4, 1976, 90 Stat. 1804, 1852.)

**AMENDMENTS**

1976—Subsec. (a)(1). Pub. L. 94-455, §2001(c)(1)(K)(i), substituted “during the 3-year period ending on the date of the decedent's death” for “in contemplation of decedent's death”.

Subsec. (a)(2). Pub. L. 94-455, §2001(c)(1)(K)(ii), substituted “during the 3-year period ending on the date of the decedent's death” for “in contemplation of his death”.

Subsec. (c). Pub. L. 94-455, §1902(a)(3), struck out subsec. (c) which covered the effect of a disability in certain cases by relating a mental disability to relinquish a power to a power, the relinquishment of which would be deemed not to be a transfer for purposes of chapter 4 of the Internal Revenue Code of 1939.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

1959—Subsec. (c). Pub. L. 86-141 added subsec. (c).

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by section 1902(a)(3) of Pub. L. 94-455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2011 of this title.

Amendment by section 2001(c)(1)(K)(i), (ii) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976 but not to transfers made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

**EFFECTIVE DATE OF 1962 AMENDMENT**

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

**EFFECTIVE DATE OF 1959 AMENDMENT**

Section 2 of Pub. L. 86-141 provided that: “The amendment made by the first section of this Act [amending this section] shall apply only with respect to estates of decedents dying after August 16, 1954. No interest shall be allowed or paid on any overpayment resulting from the application of the amendment made by the first section of this Act with respect to any pay-

ment made before the date of the enactment of this Act [Aug. 7, 1959].”

**§ 2039. Annuities**

**(a) General**

The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as insurance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

**(b) Amount includible**

Subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

(Aug. 16, 1954, ch. 736, 68A Stat. 384; Pub. L. 85-866, title I, §§23(e), 67(a), Sept. 2, 1958, 72 Stat. 1622, 1658; Pub. L. 87-792, §7(i), Oct. 10, 1962, 76 Stat. 830; Pub. L. 89-365, §2(a), Mar. 8, 1966, 80 Stat. 33; Pub. L. 91-172, title I, §101(j)(23), Dec. 30, 1969, 83 Stat. 528; Pub. L. 92-580, §2(a), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 93-406, title II, §2007(b)(4), Sept. 2, 1974, 88 Stat. 994; Pub. L. 94-455, title XX, §2009(c)(1)-(3), Oct. 4, 1976, 90 Stat. 1894, 1895; Pub. L. 95-600, title I, §§142(a), (b), 156(c)(4), title VII, §702(j)(1), Nov. 6, 1978, 92 Stat. 2796, 2803, 2931; Pub. L. 96-222, title I, §101(a)(8)(B), Apr. 1, 1980, 94 Stat. 201; Pub. L. 97-34, title III, §§311(d)(1), (h)(4), 313(b)(3), Aug. 13, 1981, 95 Stat. 280, 282, 286; Pub. L. 97-248, title II, §245(a), (b), Sept. 3, 1982, 96 Stat. 524; Pub. L. 97-448, title I, §103(c)(9), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98-369, div. A, title IV, §491(d)(34), title V, §525(a), July 18, 1984, 98 Stat. 851, 873; Pub. L. 99-514, title XVIII, §§1848(d), 1852(e)(1)(A), Oct. 22, 1986, 100 Stat. 2857, 2868.)

**AMENDMENTS**

1986—Subsec. (c). Pub. L. 99-514, §1852(e)(1), struck out subsec. (c) which provided an exclusion from gross estate of certain annuity interests created by community property laws.

Subsec. (e). Pub. L. 99-514, §1848(d), struck out “or a bond described in paragraph (3)” after “an annuity described in paragraph (2)” in concluding provisions as such provisions were applicable to obligations issued after Dec. 31, 1983, and prior to repeal of subsec. (e) by Pub. L. 98-369, §525(a), see Effective Date of 1984 Amendment note below.

1984—Subsec. (c). Pub. L. 98-369, §525(a), substituted provisions relating to exception of certain annuity interests created by community property laws for provisions which related to exemption of annuities under certain trusts and plans.

Subsec. (d). Pub. L. 98-369, § 525(a), struck out subsec. (d) which related to exemption of certain annuity interests created by community property laws. See subsec. (c) of this section.

Subsec. (e). Pub. L. 98-369, § 525(a), struck out subsec. (e) which related to exclusion of individual retirement accounts.

Pub. L. 98-369, § 491(d)(34), inserted “or” at end of par. (1), substituted a period for “, or” at end of par. (2), struck out par. (3) which excluded from the value of the gross estate the value of an annuity receivable by any beneficiary, other than the executor, under a retirement bond described in section 409(a), and substituted in provision following par. (2) “or 408(d)(3)” for “405(d)(3), 408(d)(3), or 409(b)(3)(C)”, and substituted “or annuity” for “, annuity, or bond” wherever appearing.

Subsecs. (f), (g). Pub. L. 98-369, § 525(a), struck out subsec. (f) which related to lump sum distributions and an exception where the recipient elects not to take 10-year averaging, and subsec. (g) which related to a \$100,000 limitation on the exclusions under subsecs. (c) and (e).

1983—Subsec. (f)(1). Pub. L. 97-448, § 103(c)(9)(A), designated existing provisions as subpar. (A), substituted “without regard to the third sentence of section 402(e)(4)(A)” for “without regard to the next to the last sentence of section 402(e)(4)(A)” in subpar. (A) as so designated, and added subpar. (B).

Subsec. (f)(2). Pub. L. 97-448, § 103(c)(9)(B), substituted “An amount described” for “A lump sum distribution described”.

1982—Subsec. (c). Pub. L. 97-248, § 245(b), substituted “Subject to the limitation of subsection (g), notwithstanding any other provision of this section” for “Notwithstanding the provisions of this section”.

Subsec. (e). Pub. L. 97-248, § 245(b), substituted “Subject to the limitation of subsection (g), notwithstanding any other provision of this section” for “Notwithstanding the provisions of this section”.

Subsec. (g). Pub. L. 97-248, § 245(a), added subsec. (g).

1981—Subsec. (c). Pub. L. 97-34, § 311(d)(1), provided that for purposes of subsec. (c), any deductible employee contributions, within the meaning of par. (5) of section 72(o), shall be considered as made by a person other than the decedent.

Subsec. (e). Pub. L. 97-34, § 313(b)(3), inserted reference to rollover contribution described in section 405(d)(3).

Pub. L. 97-34, § 311(h)(4), substituted “section 219” for “section 219 or 220”.

1980—Subsec. (f)(2). Pub. L. 96-222 substituted “(without the application of paragraph (2) thereof), except to the extent that section 402(e)(4)(J) applies to such distribution” for “without the application of paragraph (2) thereof”.

1978—Subsec. (c). Pub. L. 95-600, § 142(a), substituted “(other than an amount described in subsection (f))” for “(other than a lump sum distribution described in section 402(e)(4), determined without regard to the next to the last sentence of section 402(e)(4)(A))” in provisions preceding par. (1).

Subsec. (e). Pub. L. 95-600, §§ 156(c)(4), 702(j)(1), inserted “section 403(b)(8) (but only to the extent such contribution is attributed to a distribution from a contract described in subsection (c)(3)),” after “403(a)(4)” and inserted “or 220” after “section 219” wherever appearing in provisions following par. (3).

Subsec. (f). Pub. L. 95-600, § 142(b), added subsec. (f).

1976—Subsec. (c). Pub. L. 94-455, § 2009(c)(2), (3), substituted “other payment (other than a lump sum distribution described in section 402(e)(4), determined without regard to the next to the last sentence of section 402(e)(4)(A)) receivable by any beneficiary” for “other payment receivable by any beneficiary” in provisions preceding par. (1) and substituted “For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall, to the extent allowable as a deduction under section 404, be considered

to be made by a person other than the decedent and, to the extent not so allowable, shall be considered to be made by the decedent” for “For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall be considered to be contributions or payments made by the decedent” in provisions following par. (4).

Subsec. (e). Pub. L. 94-455, § 2009(c)(1), added subsec. (e).

1974—Subsec. (c). Pub. L. 93-406 inserted reference to section 1452(d) in provisions following par. (4).

1972—Subsec. (d). Pub. L. 92-580 added subsec. (d).

1969—Subsec. (c)(3). Pub. L. 91-172 substituted “section 170(b)(1)(A)(ii) or (vi), or which is a religious organization (other than a trust),” for “section 503(b) (1), (2), or (3),”.

1966—Subsec. (c). Pub. L. 89-365 added par. (4), inserted reference to chapter 73 of title 10 of the United States Code in the enumeration of the plans and contracts set out in the prohibition against allowance of exclusion for that part of the value of the amount payable under the plan or contract in the proportion that the total payments or contributions made by the decedent bear to the total payments or contributions made, and provided that, for purposes of this section, amounts payable under chapter 73 of title 10 are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by him pursuant to section 1438 of title 10.

1962—Subsec. (c). Pub. L. 87-792 substituted “was a plan described in section 403(a)” for “met the requirements of section 401(a)(3), (4), (5), and (6)” in par. (2), and inserted sentence providing, for purposes of this subsection, that contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall be considered to be contributions or payments made by the decedent.

1958—Subsec. (c)(2). Pub. L. 85-866, § 67(a), inserted “(4), (5), and (6)” after “section 401(a)(3)”.

Subsec. (c)(3) and closing sentences. Pub. L. 85-866, § 23(e), added par. (3), inserted “or under contract described in paragraph (3)” in second sentence of subsec. (c) and substituted “paragraph (1) or (2) shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent’s employer or former employer toward the purchase of an annuity contract described in paragraph (3) shall, to the extent excludable from gross income under section 403(b),” for “this subsection shall” in third sentence of subsec. (c).

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 1852(e)(1)(B) of Pub. L. 99-514 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Oct. 22, 1986].”

Amendment by section 1848(d) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(34) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

Section 525(b)(1), (2), (4) of Pub. L. 98-369, as amended by Pub. L. 99-514, title XVIII, § 1852(e)(3), Oct. 22, 1986, 100 Stat. 2868, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to the estates of decedents dying after December 31, 1984.

“(2) EXCEPTION FOR PARTICIPANTS IN PAY STATUS.—The amendments made by this section shall not apply to the estate of any decedent who—

“(A) was a participant in any plan who was in pay status on December 31, 1984, and

“(B) irrevocably elected the form of the benefit before the date of the enactment of this Act [July 18, 1984].

“(4) IRREVOCABLE ELECTION.—For purposes of paragraph (2) [set out above] and section 245(c) of the Tax Equity and Fiscal Responsibility Act of 1982 [see Effective Date of 1982 Amendment note below], an individual who—

“(A) separated from service before January 1, 1985, with respect to paragraph (2), or January 1, 1983, with respect to section 245(c) of the Tax Equity and Fiscal Responsibility Act of 1982, and

“(B) meets the requirements of such paragraph or such section other than the requirement that there be an irrevocable election, and that the individual be in pay status,

shall be treated as having made an irrevocable election and as being in pay status within the time prescribed with respect to a form of benefit if such individual does not change such form of benefit before death.”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 245(c) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title V, §525(b)(3), July 18, 1984, 98 Stat. 874, provided that: “The amendments made by this section [amending this section] shall apply to the estates of decedents dying after December 31, 1982, except that such amendments shall not apply to the estate of any decedent who was a participant in any plan who was in pay status on December 31, 1982, and irrevocably elected before January 1, 1983, the form of benefit.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(d)(1), (h)(4) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97-34, set out as a note under section 219 of this title.

Amendment by section 313(b)(3) of Pub. L. 97-34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97-34, set out as a note under section 219 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 applicable with respect to the estates of decedents dying after Apr. 1, 1980, see section 101(b)(1)(D) of Pub. L. 96-222, set out as a note under section 691 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 142(c) of Pub. L. 95-600 provided that: “The amendments made by this section [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1978.”

Amendment by section 156(c)(4) of Pub. L. 95-600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95-600, set out as a note under section 403 of this title.

Section 702(j)(3)(A) of Pub. L. 95-600 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to the estates of decedents dying after December 31, 1976.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 2009(e)(3)(A) of Pub. L. 94-455 provided that: “The amendments made by paragraphs (1), (2), and (3) of subsection (c) [amending this section] shall apply to the estates of decedents dying after December 31, 1976.”

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable to taxable years ending on or after Sept. 21, 1972, with respect to individuals dying on or after Sept. 21, 1972, see section 2007(c) of Pub. L. 93-406, set out as a note under section 122 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Section 2(b) of Pub. L. 92-580, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to estate of decedents for which the period prescribed by the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for filing of a claim for credit or refund of an overpayment of estate tax ends on or after the date of enactment of this Act [Oct. 27, 1972]. No interest shall be allowed or paid on any overpayment of estate tax resulting from the application of the amendment made by subsection (a) for any period prior to the expiration of the one hundred and eightieth day following the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Section 2(c) of Pub. L. 89-365 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to decedents dying after December 31, 1965. The amendments made by subsection (b) [amending section 2517 of this title] shall apply with respect to calendar years after 1965.”

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 22 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 23(e) of Pub. L. 85-866 applicable with respect to estates of decedents dying after Dec. 31, 1957, see section 23(g) of Pub. L. 85-866, set out as a note under section 403 of this title.

Section 67(b) of Pub. L. 85-866 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1953.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 2040. Joint interests

#### (a) General rule

The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants with right of survivorship by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the



latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship.

**(b) Certain joint interests of husband and wife**

**(1) Interests of spouse excluded from gross estate**

Notwithstanding subsection (a), in the case of any qualified joint interest, the value included in the gross estate with respect to such interest by reason of this section is one-half of the value of such qualified joint interest.

**(2) Qualified joint interest defined**

For purposes of paragraph (1), the term "qualified joint interest" means any interest in property held by the decedent and the decedent's spouse as—

- (A) tenants by the entirety, or
- (B) joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

(Aug. 16, 1954, ch. 736, 68A Stat. 385; Pub. L. 87-834, §18(a)(2)(G), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, §2002(c)(1), (3), Oct. 4, 1976, 90 Stat. 1855, 1856; Pub. L. 95-600, title V, §511(a), title VII, §702(k)(2), Nov. 6, 1978, 92 Stat. 2881, 2932; Pub. L. 96-222, title I, §105(a)(3), Apr. 1, 1980, 94 Stat. 218; Pub. L. 97-34, title IV, §403(c)(1)–(3)(A), Aug. 13, 1981, 95 Stat. 301, 302.)

**AMENDMENTS**

1981—Subsec. (a). Pub. L. 97-34, §403(c)(2), substituted "joint tenants with right of survivorship" for "joint tenants" in three places.

Subsec. (b)(2). Pub. L. 97-34, §403(c)(1), in redefining "qualified joint interest" substituted provision defining term as meaning any interest in property held by the decedent and the decedent's spouse as tenants by the entirety, or joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants for provision defining the term as meaning any interest in property held by the decedent and the decedent's spouse as joint tenants or as tenants by the entirety, but only if such joint interest was created by the decedent, the decedent's spouse, or both, in the case of personal property, the creation of such joint interest constituted in whole or in part a gift for purposes of chapter 12, or in the case of real property, an election under section 2515 applies with respect to the creation of such joint interest, and in the case of a joint tenancy, only the decedent and the decedent's spouse are joint tenants.

Subsecs. (c) to (e). Pub. L. 97-34, §403(c)(3)(A), repealed subsec. (c) respecting value where spouse of decedent materially participated in farm or other business, subsec. (d) relating to joint interests of husband and wife created before 1977, and subsec. (e) covering treatment of certain post-1976 terminations.

1980—Subsec. (c)(1). Pub. L. 96-222, §105(a)(3)(B), substituted "subsection (a)" for "subsections (a)".

Subsec. (c)(2)(C). Pub. L. 96-222, §105(a)(3)(A), added subpar. (C).

1978—Subsec. (c). Pub. L. 95-600, §511(a), added subsec. (c).

Subsecs. (d), (e). Pub. L. 95-600, §702(k)(2), added subsecs. (d) and (e).

1976—Pub. L. 94-455 designated existing provisions as subsec. (a), added heading for subsec. (a), and added subsec. (b).

1962—Pub. L. 87-834 struck out provisions which excepted real property outside of the United States.

**EFFECTIVE DATE OF 1981 AMENDMENT**

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97-34, set out as a note under section 2056 of this title.

**EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

**EFFECTIVE DATE OF 1978 AMENDMENT**

Section 511(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1978."

**EFFECTIVE DATE OF 1976 AMENDMENT**

Section 2002(d)(3) of Pub. L. 94-455 provided that: "The amendment made by subsection (c) [amending this section and section 2515 of this title] shall apply to joint interests created after December 31, 1976."

**EFFECTIVE DATE OF 1962 AMENDMENT**

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

**CONSIDERATION GIVEN BEFORE JULY 14, 1988 BY DECEDENT TO NONCITIZEN SPOUSE TREATED AS ORIGINALLY BELONGING TO SPOUSE**

Pub. L. 101-239, title VII, §7815(d)(16), Dec. 19, 1989, 103 Stat. 2419, as amended by Pub. L. 101-508, title XI, §11701(l)(3), Nov. 5, 1990, 104 Stat. 1388-513, provided that: "For purposes of applying section 2040(a) of the Internal Revenue Code of 1986 with respect to any joint interest to which section 2040(b) of such Code does not apply solely by reason of section 2056(d)(1)(B) of such Code, any consideration furnished before July 14, 1988, by the decedent for such interest to the extent treated as a gift to the spouse of the decedent for purposes of chapter 12 of such Code (or would have been so treated if the donor were a citizen of the United States) shall be treated as consideration originally belonging to such spouse and never acquired by such spouse from the decedent."

**§ 2041. Powers of appointment**

**(a) In general**

The value of the gross estate shall include the value of all property—

**(1) Powers of appointment created on or before October 21, 1942**

To the extent of any property with respect to which a general power of appointment cre-

ated on or before October 21, 1942, is exercised by the decedent—

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive;

but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

(i) such partial release occurred before November 1, 1951, or

(ii) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than 6 months after the termination of such legal disability.

### **(2) Powers created after October 21, 1942**

To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive. For purposes of this paragraph (2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

### **(3) Creation of another power in certain cases**

To the extent of any property with respect to which the decedent—

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includible in the decedent's gross estate under section 2035, 2036, or 2037,

exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

### **(b) Definitions**

For purposes of subsection (a)—

#### **(1) General power of appointment**

The term "general power of appointment" means a power which is exercisable in favor of

the decedent, his estate, his creditors, or the creditors of his estate; except that—

(A) A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

(B) A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.

(C) In the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person—

(i) If the power is not exercisable by the decedent except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment.

(ii) If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent—such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

(iii) If (after the application of clauses (i) and (ii)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

For purposes of clauses (ii) and (iii), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

### **(2) Lapse of power**

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property, which could have been appointed by exercise of such lapsed powers, exceeded in value, at the time of such lapse, the greater of the following amounts:

(A) \$5,000, or

(B) 5 percent of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.

**(3) Date of creation of power**

For purposes of this section, a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

(Aug. 16, 1954, ch. 736, 68A Stat. 385; Pub. L. 87-834, §18(a)(2)(H), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, §2009(b)(4)(A), Oct. 4, 1976, 90 Stat. 1894.)

## AMENDMENTS

1976—Subsec. (a)(2). Pub. L. 94-455 struck out provision that a disclaimer or renunciation of a power of appointment not be deemed a release of that power.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as a note under section 2518 of this title.

## EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

**§ 2042. Proceeds of life insurance**

The value of the gross estate shall include the value of all property—

**(1) Receivable by the executor**

To the extent of the amount receivable by the executor as insurance under policies on the life of the decedent.

**(2) Receivable by other beneficiaries**

To the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. For purposes of the preceding sentence, the term “incident of ownership” includes a reversionary interest (whether arising by the express terms of the policy or other instrument or by operation of law) only if the value of such reversionary interest exceeded 5 percent of the value of the policy immediately before the death of the decedent. As used in this paragraph, the term “reversionary interest” includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate, or may be subject to a power of disposition by him. The value of a reversionary interest at any time shall be determined (without regard to the fact of the decedent’s death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Secretary. In determining the value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that

such policy or proceeds may return to the decedent or his estate.

(Aug. 16, 1954, ch. 736, 68A Stat. 387; Pub. L. 94-455, title XIX, §1906(b)(13) (A), Oct. 4, 1976, 90 Stat. 1834.)

## AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

**§ 2043. Transfers for insufficient consideration****(a) In general**

If any one of the transfers, trusts, interests, rights, or powers enumerated and described in sections 2035 to 2038, inclusive, and section 2041 is made, created, exercised, or relinquished for a consideration in money or money’s worth, but is not a bona fide sale for an adequate and full consideration in money or money’s worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

**(b) Marital rights not treated as consideration****(1) In general**

For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent’s property or estate, shall not be considered to any extent a consideration “in money or money’s worth”.

**(2) Exception**

For purposes of section 2053 (relating to expenses, indebtedness, and taxes), a transfer of property which satisfies the requirements of paragraph (1) of section 2516 (relating to certain property settlements) shall be considered to be made for an adequate and full consideration in money or money’s worth.

(Aug. 16, 1954, ch. 736, 68A Stat. 388; Pub. L. 98-369, div. A, title IV, §425(a)(1), July 18, 1984, 98 Stat. 803.)

## AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 amended subsec. (b) generally, designating existing provisions as par. (1) and adding par. (2).

## EFFECTIVE DATE OF 1984 AMENDMENT

Section 425(c)(1) of Pub. L. 98-369 provided that: “The amendments made by subsection (a) [amending this section and section 2053 of this title] shall apply to estates of decedents dying after the date of the enactment of this Act [July 18, 1984].”

**§ 2044. Certain property for which marital deduction was previously allowed****(a) General rule**

The value of the gross estate shall include the value of any property to which this section applies in which the decedent had a qualifying income interest for life.

**(b) Property to which this section applies**

This section applies to any property if—

(1) a deduction was allowed with respect to the transfer of such property to the decedent—

(A) under section 2056 by reason of subsection (b)(7) thereof, or

(B) under section 2523 by reason of subsection (f) thereof, and

(2) section 2519 (relating to dispositions of certain life estates) did not apply with respect to a disposition by the decedent of part or all of such property.

**(c) Property treated as having passed from decedent**

For purposes of this chapter and chapter 13, property includible in the gross estate of the decedent under subsection (a) shall be treated as property passing from the decedent.

(Added Pub. L. 97-34, title IV, §403(d)(3)(A)(i), Aug. 13, 1981, 95 Stat. 304; amended Pub. L. 97-448, title I, §104(a)(1)(B), Jan. 12, 1983, 96 Stat. 2380.)

**PRIOR PROVISIONS**

A prior section 2044 was renumbered section 2045 of this title.

**AMENDMENTS**

1983—Subsec. (c). Pub. L. 97-448 added subsec. (c).

**EFFECTIVE DATE OF 1983 AMENDMENT**

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

**EFFECTIVE DATE**

Section applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97-34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

**§ 2045. Prior interests**

Except as otherwise specifically provided by law, sections 2034 to 2042, inclusive, shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whenever made, created, arising, existing, exercised, or relinquished.

(Aug. 16, 1954, ch. 736, 68A Stat. 388, §2044; Pub. L. 94-455, title XX, §2001(c)(1)(M), Oct. 4, 1976, 90 Stat. 1853; renumbered §2045, Pub. L. 97-34, title IV, §403(d)(3)(A)(i), Aug. 13, 1981, 95 Stat. 304.)

**PRIOR PROVISIONS**

A prior section 2045 was renumbered section 2046 of this title.

**AMENDMENTS**

1976—Pub. L. 94-455 substituted “specifically provided by law” for “specifically provided therein”.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d) of Pub. L. 94-455, set out as a note under section 2001 of this title.

**§ 2046. Disclaimers**

**For provisions relating to the effect of a qualified disclaimer for purposes of this chapter, see section 2518.**

(Added Pub. L. 94-455, title XX, §2009(b)(2), Oct. 4, 1976, 90 Stat. 1893, §2045; renumbered §2046, Pub. L. 97-34, title IV, §403(d)(3)(A)(i), Aug. 13, 1981, 95 Stat. 304.)

**EFFECTIVE DATE**

Section applicable to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as a note under section 2518 of this title.

**PART IV—TAXABLE ESTATE**

**Sec.**

2051.	Definition of taxable estate.
[2052.]	Repealed.]
2053.	Expenses, indebtedness, and taxes.
2054.	Losses.
2055.	Transfers for public, charitable, and religious uses.
2056.	Bequests, etc., to surviving spouse.
2056A.	Qualified domestic trust.
2057.	Family-owned business interests.
2058.	State death taxes.

**AMENDMENTS**

2001—Pub. L. 107-16, title V, §532(c)(14), June 7, 2001, 115 Stat. 75, added item 2058.

1998—Pub. L. 105-206, title VI, §6006(b)(1)(F), July 22, 1998, 112 Stat. 808, added item 2057.

1990—Pub. L. 101-508, title XI, §11704(a)(39), Nov. 5, 1990, 104 Stat. 1388-520, amended directory language of section 5033(a)(3) of Pub. L. 100-647. See 1988 Amendment note below.

Pub. L. 101-508, title XI, §11704(a)(16), Nov. 5, 1990, 104 Stat. 1388-518, substituted “trust” for “trusts” in item 2056A.

1989—Pub. L. 101-239, title VII, §7304(a)(2)(E), Dec. 19, 1989, 103 Stat. 2353, struck out item 2057 “Sales of employer securities to employee stock ownership plans or worker-owned cooperatives”.

1988—Pub. L. 100-647, title V, §5033(a)(3), Nov. 10, 1988, 102 Stat. 3672, as amended by Pub. L. 101-508, title XI, §11704(a)(39), Nov. 5, 1990, 104 Stat. 1388-520, added item 2056A.

1986—Pub. L. 99-514, title XI, §1172(b)(3), Oct. 22, 1986, 100 Stat. 2515, added item 2057.

1981—Pub. L. 97-34, title IV, §427(b), Aug. 13, 1981, 95 Stat. 318, struck out item 2057 “Bequests, etc., to certain minor children”.

1976—Pub. L. 94-455, title XX, §§2001(c)(1)(N)(iv), 2007(b), Oct. 4, 1976, 90 Stat. 1853, 1890, added item 2057 and struck out item 2052 “Exemption”.

**§ 2051. Definition of taxable estate**

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the deductions provided for in this part.

(Aug. 16, 1954, ch. 736, 68A Stat. 388; Pub. L. 95-600, title VII, §702(r)(2), Nov. 6, 1978, 92 Stat. 2938.)

**AMENDMENTS**

1978—Pub. L. 95-600 struck out “exemption and” after “gross estate the”.

**EFFECTIVE DATE OF 1978 AMENDMENT**

Section 702(r)(5) of Pub. L. 95-600 provided that: “The amendments made by this subsection [amending this section and sections 1016, 6324B, and 6698A of this title] shall apply to estates of decedents dying after December 31, 1976.”

**[§ 2052. Repealed. Pub. L. 94-455, title XX, § 2001(a)(4), Oct. 4, 1976, 90 Stat. 1848]**

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 389, provided for an exemption of \$60,000 to be deducted from gross estate in determining value of taxable estate.

**EFFECTIVE DATE OF REPEAL**

Repeal applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2001 of this title.

**§ 2053. Expenses, indebtedness, and taxes**

**(a) General rule**

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate such amounts—

- (1) for funeral expenses,
- (2) for administration expenses,
- (3) for claims against the estate, and
- (4) for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate,

as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.

**(b) Other administration expenses**

Subject to the limitations in paragraph (1) of subsection (c), there shall be deducted in determining the taxable estate amounts representing expenses incurred in administering property not subject to claims which is included in the gross estate to the same extent such amounts would be allowable as a deduction under subsection (a) if such property were subject to claims, and such amounts are paid before the expiration of the period of limitation for assessment provided in section 6501.

**(c) Limitations**

**(1) Limitations applicable to subsections (a) and (b)**

**(A) Consideration for claims**

The deduction allowed by this section in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded on a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in section 2055 for the purposes specified therein, the deduction for such claims shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under section 2055 if such promise or agreement constituted a bequest.

**(B) Certain taxes**

Any income taxes on income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes, shall not be deductible under this section.

**(C) Certain claims by remaindermen**

No deduction shall be allowed under this section for a claim against the estate by a remainderman relating to any property described in section 2044.

**(D) Section 6166 interest**

No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.

**(2) Limitations applicable only to subsection (a)**

In the case of the amounts described in subsection (a), there shall be disallowed the amount by which the deductions specified therein exceed the value, at the time of the decedent's death, of property subject to claims, except to the extent that such deductions represent amounts paid before the date prescribed for the filing of the estate tax return. For purposes of this section, the term "property subject to claims" means property includible in the gross estate of the decedent which, or the avails of which, would under the applicable law, bear the burden of the payment of such deductions in the final adjustment and settlement of the estate, except that the value of the property shall be reduced by the amount of the deduction under section 2054 attributable to such property.

**(d) Certain foreign death taxes**

**(1) In general**

Notwithstanding the provisions of subsection (c)(1)(B), for purposes of the tax imposed by section 2001, the value of the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary) of any estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country, in respect of any property situated within such foreign country and included in the gross estate of a citizen or resident of the United States, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055. The determination under this paragraph of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States. Any election under this paragraph shall be exercised in accordance with regulations prescribed by the Secretary.

**(2) Condition for allowance of deduction**

No deduction shall be allowed under paragraph (1) for a foreign death tax specified therein unless the decrease in the tax imposed by section 2001 which results from the deduction provided in paragraph (1) will inure solely for the benefit of the public, charitable, or religious transferees described in section 2055 or

section 2106(a)(2). In any case where the tax imposed by section 2001 is equitably apportioned among all the transferees of property included in the gross estate, including those described in sections 2055 and 2106(a)(2) (taking into account any exemptions, credits, or deductions allowed by this chapter), in determining such decrease, there shall be disregarded any decrease in the Federal estate tax which any transferees other than those described in sections 2055 and 2106(a)(2) are required to pay.

**(3) Effect on credit for foreign death taxes of deduction under this subsection**

**(A) Election**

An election under this subsection shall be deemed a waiver of the right to claim a credit, against the Federal estate tax, under a death tax convention with any foreign country for any tax or portion thereof in respect of which a deduction is taken under this subsection.

**(B) Cross reference**

See section 2014(f) for the effect of a deduction taken under this paragraph on the credit for foreign death taxes.

**(e) Marital rights**

For provisions treating certain relinquishments of marital rights as consideration in money or money's worth, see section 2043(b)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 389; Feb. 20, 1956, ch. 63, § 2, 70 Stat. 23; Pub. L. 85-866, title I, § 102(c)(3), Sept. 2, 1958, 72 Stat. 1674; Pub. L. 86-175, § 1, Aug. 21, 1959, 73 Stat. 396; Pub. L. 94-455, title XIX, §§ 1902(a)(12) (B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1806, 1834; Pub. L. 98-369, div. A, title IV, § 425(a)(2), title X, § 1027(b), July 18, 1984, 98 Stat. 804, 1031; Pub. L. 100-647, title I, § 1011A(g)(11), Nov. 10, 1988, 102 Stat. 3482; Pub. L. 105-34, title V, § 503(b)(1), title X, § 1073(b)(3), Aug. 5, 1997, 111 Stat. 853, 948; Pub. L. 107-16, title V, § 532(c)(5), June 7, 2001, 115 Stat. 74; Pub. L. 107-134, title I, § 103(b)(2), Jan. 23, 2002, 115 Stat. 2431.)

**AMENDMENT OF SECTION**

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

**AMENDMENTS**

2002—Subsec. (d)(3)(B). Pub. L. 107-134 substituted “section 2011(d)” for “section 2011(e)”.

2001—Subsec. (d). Pub. L. 107-16, §§ 532(c)(5), 901, temporarily substituted “Certain foreign death taxes” for “Certain State and foreign death taxes” in heading and amended text generally, revising and restating provisions of pars. (1) to (3) so as to eliminate provisions relating to deduction for State death taxes. See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (c)(1)(B). Pub. L. 105-34, § 1073(b)(3), struck out at end “This subparagraph shall not apply to any increase in the tax imposed by this chapter by reason of section 4980A(d).”

Subsec. (c)(1)(D). Pub. L. 105-34, § 503(b)(1), added subpar. (D).

1988—Subsec. (c)(1)(B). Pub. L. 100-647, inserted at end “This subparagraph shall not apply to any increase in the tax imposed by this chapter by reason of section 4980A(d).”

1984—Subsec. (c)(1)(C). Pub. L. 98-369, § 1027(b), added subpar. (C).

Subsec. (e). Pub. L. 98-369, § 425(a)(2), substituted “For provisions treating certain relinquishments of marital rights as consideration in money or money's worth, see section 2043(b)(2)” for “For provisions that relinquishment of marital rights shall not be deemed a consideration ‘in money or money's worth,’ see section 2043(b).”

1976—Subsec. (d)(1). Pub. L. 94-455 struck out “or his delegate” after “Secretary” in provisions preceding subpar. (A) and following subpar. (B) and struck out “or Territory” after “a State” in subpar. (A).

1959—Subsec. (d). Pub. L. 86-175 inserted a reference to foreign death taxes in heading of subsection and par. (3) and in text of par. (2), redesignated provisions of par. (1) as par. (1)(A) and sentence pertaining to exercise of privilege of election, added par. (2) and sentence for determining location of property, redesignated provisions of par. (3) as par. (3)(B) in part, and added par. (3)(A) and the part of (B) relating to foreign death taxes.

1958—Subsec. (d)(1). Pub. L. 85-866 struck out “or any possession of the United States,” after “District of Columbia.”

1956—Subsecs. (d), (e). Act Feb. 20, 1956, added subsec. (d) and redesignated former subsec. (d) as (e).

**EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107-134 applicable to estates of decedents dying on or after Sept. 11, 2001, and, in the case of individuals dying as a result of the Apr. 19, 1995, terrorist attack, dying on or after Apr. 19, 1995, with provisions relating to waiver of limitations, see section 103(d) of Pub. L. 107-134, set out as a note under section 2011 of this title.

**EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT**

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by section 503(b)(1) of Pub. L. 105-34 applicable to estates of decedents dying after Dec. 31, 1997, with special rule in case of estate of any decedent dying before Jan. 1, 1998, with respect to which there is an election under section 6166 of this title, see section 503(d) of Pub. L. 105-34, set out as a note under section 163 of this title.

Amendment by section 1073(b)(3) of Pub. L. 105-34 applicable to estates of decedents dying after Dec. 31, 1996, see section 1073(c) of Pub. L. 105-34, set out as an Effective Date of Repeal note under section 4980A of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by section 425(a)(2) of Pub. L. 98-369 applicable to estates of decedents dying after July 18, 1984, see section 425(c)(1) of Pub. L. 98-369, set out as a note under section 2043 of this title.

Section 1027(c) of Pub. L. 98-369 provided that: “The amendments made by this section [amending this section and section 2056 of this title] shall take effect as if included in the amendment made by section 403 of the Economic Recovery Tax Act of 1981 [section 403 of

Pub. L. 97-34, see Effective Date of 1981 Amendment note set out under section 2056 of this title].”

EFFECTIVE DATE OF 1959 AMENDMENT

Section 4 of Pub. L. 86-175 provided that: “The amendments made by the preceding sections of this Act [amending this section and sections 2011 and 2014 of this title] shall apply with respect to the estates of decedents dying on or after July 1, 1955.”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to estates of decedents dying after Sept. 2, 1958, see section 102(d) of Pub. L. 85-866, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 4 of act Feb. 20, 1956, as amended by act Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095, provided that: “The amendments to the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made by sections 2 and 3 of this Act [amending this section and section 2011 of this title], and provisions having the same effect as this amendment, which shall be considered to be included in chapter 3 of the Internal Revenue Code of 1939, shall apply to the estates of all decedents dying after December 31, 1953.”

**§ 2054. Losses**

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise.

(Aug. 16, 1954, ch. 736, 68A Stat. 390.)

**§ 2055. Transfers for public, charitable, and religious uses**

**(a) In general**

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers—

(1) to or for the use of the United States, any State, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contribu-

tions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(4) to or for the use of any veterans' organization incorporated by Act of Congress, or of its departments or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual; or

(5) to an employee stock ownership plan if such transfer qualifies as a qualified gratuitous transfer of qualified employer securities within the meaning of section 664(g).

For purposes of this subsection, the complete termination before the date prescribed for the filing of the estate tax return of a power to consume, invade, or appropriate property for the benefit of an individual before such power has been exercised by reason of the death of such individual or for any other reason shall be considered and deemed to be a qualified disclaimer with the same full force and effect as though he had filed such qualified disclaimer. Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

**(b) Powers of appointment**

Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this section shall, for purposes of this section, be considered a bequest of such decedent.

**(c) Death taxes payable out of bequests**

If the tax imposed by section 2001, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this section, then the amount deductible under this section shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

**(d) Limitation on deduction**

The amount of the deduction under this section for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

**(e) Disallowance of deductions in certain cases**

(1) No deduction shall be allowed under this section for a transfer to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where an interest in property (other than an interest described in section 170(f)(3)(B))

passes or has passed from the decedent to a person, or for a use, described in subsection (a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in subsection (a), no deduction shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in subsection (a) unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) REFORMATIONS TO COMPLY WITH PARAGRAPH (2).—

(A) IN GENERAL.—A deduction shall be allowed under subsection (a) in respect of any qualified reformation.

(B) QUALIFIED REFORMATION.—For purposes of this paragraph, the term “qualified reformation” means a change of a governing instrument by reformation, amendment, construction, or otherwise which changes a reformable interest into a qualified interest but only if—

(i) any difference between—

(I) the actuarial value (determined as of the date of the decedent's death) of the qualified interest, and

(II) the actuarial value (as so determined) of the reformable interest,

does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest.

(ii) in the case of—

(I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or

(II) any other interest, the reformable interest and the qualified interest are for the same period, and

(iii) such change is effective as of the date of the decedent's death.

A nonremainder interest (before reformation) for a term of years in excess of 20 years shall be treated as satisfying subclause (I) of clause (ii) if such interest (after reformation) is for a term of 20 years.

(C) REFORMABLE INTEREST.—For purposes of this paragraph—

(i) IN GENERAL.—The term “reformable interest” means any interest for which a deduction would be allowable under subsection (a) at the time of the decedent's death but for paragraph (2).

(ii) BENEFICIARY'S INTEREST MUST BE FIXED.—The term “reformable interest” does not include any interest unless, before the

remainder vests in possession, all payments to persons other than an organization described in subsection (a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property. For purposes of determining whether all such payments are expressed as a fixed percentage of the fair market value of the property, section 664(d)(3) shall be taken into account.

(iii) SPECIAL RULE WHERE TIMELY COMMENCEMENT OF REFORMATION.—Clause (ii) shall not apply to any interest if a judicial proceeding is commenced to change such interest into a qualified interest not later than the 90th day after—

(I) if an estate tax return is required to be filed, the last date (including extensions) for filing such return, or

(II) if no estate tax return is required to be filed, the last date (including extensions) for filing the income tax return for the 1st taxable year for which such a return is required to be filed by the trust.

(iv) SPECIAL RULE FOR WILL EXECUTED BEFORE JANUARY 1, 1979, ETC.—In the case of any interest passing under a will executed before January 1, 1979, or under a trust created before such date, clause (ii) shall not apply.

(D) QUALIFIED INTEREST.—For purposes of this paragraph, the term “qualified interest” means an interest for which a deduction is allowable under subsection (a).

(E) LIMITATION.—The deduction referred to in subparagraph (A) shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for paragraph (2).

(F) SPECIAL RULE WHERE INCOME BENEFICIARY DIES.—If (by reason of the death of any individual, or by termination or distribution of a trust in accordance with the terms of the trust instrument) by the due date for filing the estate tax return (including any extension thereof) a reformable interest is in a wholly charitable trust or passes directly to a person or for a use described in subsection (a), a deduction shall be allowed for such reformable interest as if it had met the requirements of paragraph (2) on the date of the decedent's death. For purposes of the preceding sentence, the term “wholly charitable trust” means a charitable trust which, upon the allowance of a deduction, would be described in section 4947(a)(1).

(G) STATUTE OF LIMITATIONS.—The period for assessing any deficiency of any tax attributable to the application of this paragraph shall not expire before the date 1 year after the date on which the Secretary is notified that such reformation (or other proceeding pursuant to subparagraph (J))<sup>1</sup> has occurred.

(H) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing such adjustments in the application of the provisions of

<sup>1</sup> So in original. Probably should be followed by an additional closing parenthesis.



section 508 (relating to special rules relating to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations) as may be necessary by reason of the qualified reformation.

(I) REFORMATIONS PERMITTED IN CASE OF REMAINDER INTERESTS IN RESIDENCE OR FARM, POOLED INCOME FUNDS, ETC.—The Secretary shall prescribe regulations (consistent with the provisions of this paragraph) permitting reformations in the case of any failure—

(i) to meet the requirements of section 170(f)(3)(B) (relating to remainder interests in personal residence or farm, etc.), or

(ii) to meet the requirements of section 642(c)(5).

(J) VOID OR REFORMED TRUST IN CASES OF INSUFFICIENT REMAINDER INTERESTS.—In the case of a trust that would qualify (or could be reformed to qualify pursuant to subparagraph (B)) but for failure to satisfy the requirement of paragraph (1)(D) or (2)(D) of section 664(d), such trust may be—

(i) declared null and void ab initio, or

(ii) changed by reformation, amendment, or otherwise to meet such requirement by reducing the payout rate or the duration (or both) of any noncharitable beneficiary's interest to the extent necessary to satisfy such requirement,

pursuant to a proceeding that is commenced within the period required in subparagraph (C)(iii). In a case described in clause (i), no deduction shall be allowed under this title for any transfer to the trust and any transactions entered into by the trust prior to being declared void shall be treated as entered into by the transferor.

(4) WORKS OF ART AND THEIR COPYRIGHTS TREATED AS SEPARATE PROPERTIES IN CERTAIN CASES.—

(A) IN GENERAL.—In the case of a qualified contribution of a work of art, the work of art and the copyright on such work of art shall be treated as separate properties for purposes of paragraph (2).

(B) WORK OF ART DEFINED.—For purposes of this paragraph, the term “work of art” means any tangible personal property with respect to which there is a copyright under Federal law.

(C) QUALIFIED CONTRIBUTION DEFINED.—For purposes of this paragraph, the term “qualified contribution” means any transfer of property to a qualified organization if the use of the property by the organization is related to the purpose or function constituting the basis for its exemption under section 501.

(D) QUALIFIED ORGANIZATION DEFINED.—For purposes of this paragraph, the term “qualified organization” means any organization described in section 501(c)(3) other than a private foundation (as defined in section 509). For purposes of the preceding sentence, a private operating foundation (as defined in section 4942(j)(3)) shall not be treated as a private foundation.

(5) CONTRIBUTIONS TO DONOR ADVISED FUNDS.—A deduction otherwise allowed under subsection

(a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3) or (4) of subsection (a), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

**(f) Special rule for irrevocable transfers of easements in real property**

A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

**(g) Valuation of subsequent gifts**

**(1) In general**

In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

(A) the fair market value of the property at the time of the initial fractional contribution, or

(B) the fair market value of the property at the time of the additional contribution.

**(2) Definitions**

For purposes of this paragraph—

**(A) Additional contribution**

The term “additional contribution” means a bequest, legacy, devise, or transfer described in subsection (a) of any interest in a property with respect to which the decedent had previously made an initial fractional contribution.

**(B) Initial fractional contribution**

The term “initial fractional contribution” means, with respect to any decedent, any charitable contribution of an undivided portion of the decedent's entire interest in any tangible personal property for which a deduction was allowed under section 170.

**(h) Cross references**

**(1) For option as to time for valuation for purpose of deduction under this section, see section 2032.**

**(2) For treatment of certain organizations providing child care, see section 501(k).**

**(3) For exemption of gifts and bequests to or for the benefit of Library of Congress, see section 5 of the Act of March 3, 1925, as amended (2 U.S.C. 161).**

**(4) For treatment of gifts and bequests for the benefit of the Naval Historical Center as gifts or bequests to or for the use of the United States, see section 7222 of title 10, United States Code.**

**(5) For treatment of gifts and bequests to or for the benefit of National Park Foundation as gifts or**

bequests to or for the use of the United States, see section 8 of the Act of December 18, 1967 (16 U.S.C. 191).

(6) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises, or bequests to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(7) For treatment of gifts or bequests of money accepted by the Attorney General for credit to “Commissary Funds, Federal Prisons,” as gifts or bequests to or for the use of the United States, see section 4043 of title 18, United States Code.

(8) For payment of tax on gifts and bequests of United States obligations to the United States, see section 3113(e) of title 31, United States Code.

(9) For treatment of gifts and bequests for benefit of the Naval Academy as gifts or bequests to or for the use of the United States, see section 6973 of title 10, United States Code.

(10) For treatment of gifts and bequests for benefit of the Naval Academy Museum as gifts or bequests to or for the use of the United States, see section 6974 of title 10, United States Code.

(11) For exemption of gifts and bequests received by National Archives Trust Fund Board, see section 2308 of title 44, United States Code.

(12) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 390; Aug. 6, 1956, ch. 1020, § 1, 70 Stat. 1075; Pub. L. 85-866, title I, § 30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 91-172, title II, § 201(d)(1), (4)(A), Dec. 30, 1969, 83 Stat. 560, 561; Pub. L. 91-614, title I, § 101(c), Dec. 31, 1970, 84 Stat. 1836; Pub. L. 93-483, § 3(a), Oct. 26, 1974, 88 Stat. 1457; Pub. L. 94-455, title XIII, §§ 1304(a), 1307(d)(1)(B)(ii), (C), 1313(b)(2), title XIX, §§ 1902(a)(4), (12)(A), 1906(b)(13)(A), title XX, § 2009(b)(4)(B), (C), title XXI, § 2124(e)(2), Oct. 4, 1976, 90 Stat. 1715, 1727, 1730, 1804, 1805, 1834, 1894, 1919; Pub. L. 95-600, title V, § 514(a), Nov. 6, 1978, 92 Stat. 2883; Pub. L. 96-222, title I, § 105(a)(4)(A), Apr. 1, 1980, 94 Stat. 219; Pub. L. 96-465, title II, § 2206(e)(4), Oct. 17, 1980, 94 Stat. 2163; Pub. L. 96-605, title III, § 301(a), Dec. 28, 1980, 94 Stat. 3530; Pub. L. 97-34, title IV, § 423(a), Aug. 13, 1981, 95 Stat. 316; Pub. L. 97-248, title II, § 286(b)(2), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97-258, § 3(f)(1), (2), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 97-473, title II, § 202(b)(5), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98-369, div. A, title X, §§ 1022(a), 1032(b)(2), July 18, 1984, 98 Stat. 1026, 1033; Pub. L. 99-514, title XIV, § 1422(a), Oct. 22, 1986, 100 Stat. 2716; Pub. L. 100-203, title X, § 10711(a)(3), Dec. 22, 1987, 101 Stat. 1330-464; Pub. L. 104-201, div. A, title X, § 1073(b)(3), Sept. 23, 1996, 110 Stat. 2657; Pub. L. 105-34, title X, § 1089(b)(3), (5), title XV, § 1530(c)(7), Aug. 5, 1997, 111 Stat. 960, 961, 1078; Pub. L. 109-280, title XII, §§ 1218(b), 1234(b), Aug. 17, 2006, 120 Stat. 1081, 1100.)

#### REFERENCES IN TEXT

Section 25 of the State Department Basic Authorities Act of 1956, referred to in subsec. (h)(6), is classified to section 2697 of Title 22, Foreign Relations and Intercourse.

#### CODIFICATION

Sections 1218(b) and 1234(b) of Pub. L. 109-280, which directed the amendment of section 2055 without specifying the act to be amended, were executed to this section, which is section 2055 of the Internal Revenue Code

of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

#### AMENDMENTS

2006—Subsec. (e)(5). Pub. L. 109-280, § 1234(b), added par. (5). See Codification note above.

Subsecs. (g), (h). Pub. L. 109-280, § 1218(b), added subsec. (g) and redesignated former subsec. (g) as (h). See Codification note above.

1997—Subsec. (a)(5). Pub. L. 105-34, § 1530(c)(7), added par. (5).

Subsec. (e)(3)(G). Pub. L. 105-34, § 1089(b)(5), inserted “(or other proceeding pursuant to subparagraph (J))” after “reformation”.

Subsec. (e)(3)(J). Pub. L. 105-34, § 1089(b)(3), added subpar. (J).

1996—Subsec. (g)(4). Pub. L. 104-201 amended par. (4) generally, substituting reference to Naval Historical Center for reference to Office of Naval Records and History.

1987—Subsec. (a)(2), (3). Pub. L. 100-203 inserted “(or in opposition to)” after “on behalf of”.

1986—Subsecs. (f), (g). Pub. L. 99-514 added subsec. (f) and redesignated former subsec. (f) as (g).

1984—Subsec. (e)(3). Pub. L. 98-369, § 1022(a), amended par. (3) generally, substituting provisions relating to reformations to comply with par. (2), defining “qualified reformation”, “reformable interest”, and “qualified interest”, and setting forth limitations on the deduction, a special rule where the income beneficiary dies, statute of limitations, regulations prescribed by the Secretary, and reformations permitted in the case of remainder interests in a residence or farm, pooled income funds, etc., for former par. (3), which provided: “In the case of a will executed before December 31, 1978, or a trust created before such date, if a deduction is not allowable at the time of the decedent’s death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in subsection (a) to meet the requirements of subparagraph (A) or (B) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, 1981, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1981, (which are required to amend or conform the governing instrument), become final, so that the interest is in a trust which meets the requirements of such subparagraph (A) or (B) (as the case may be), a deduction shall nevertheless be allowed. The Secretary may, by regulation, provide for the application of the provisions of this paragraph to trusts whose governing instruments are amended or conformed in accordance with this paragraph, and such regulations may provide for any adjustments in the application of the provisions of section 508 (relating to special rules with respect to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations), to such trusts made necessary by the application of this paragraph. If, by the due date for the filing of an estate tax return (including any extension thereof), the interest is in a charitable trust which, upon allowance of a deduction, would be described in section 4947(a)(1), or the interest passes directly to a person or for a use described in subsection (a), a deduction shall be allowed as if the governing instrument was amended or conformed under this paragraph. If the amendment or conformation of the governing instrument is made after the due date for the filing of the estate tax return (including any extension thereof), the deduction shall be allowed upon the filing of a timely claim for credit or refund (as provided for in section 6511) of an overpayment resulting from the application of this paragraph. In the case of a credit or refund as a result of an amendment or conformation made pursuant to this paragraph, no interest shall be allowed for the period prior to the expiration of the 180th day after the date on which the claim for credit or refund is filed.”

Subsec. (f)(2). Pub. L. 98-369, § 1032(b)(2), added par. (2), and redesignated former pars. (2) to (11) as pars. (3) to (12), respectively.

1983—Subsec. (f)(11). Pub. L. 97-473 added par. (11).  
 1982—Subsec. (a). Pub. L. 97-248 inserted provision that rules similar to the rules of section 501(j) of this title shall apply for purposes of par. (2).

Subsec. (f)(6). Pub. L. 97-258, §3(f)(1), substituted “section 4043 of title 18, United States Code” for “section 2 of the Act of May 15, 1952, as amended by the Act of July 9, 1952 (31 U.S.C. 725-4)”.

Subsec. (f)(7). Pub. L. 97-258, §3(f)(2), substituted “section 3113(e) of title 31, United States Code” for “section 24 of the Second Liberty Bond Act (31 U.S.C. 757e)”.

1981—Subsec. (e)(4). Pub. L. 97-34 added par. (4).

1980—Subsec. (e)(3). Pub. L. 96-605 substituted “December 31, 1978” for “December 31, 1977” and “December 31, 1981” for “December 31, 1978” in two places.

Pub. L. 96-222 substituted “such subparagraph (A) or (B)” for “such subparagraph (a) or (B)” and “so that the interest” for “so that interest”.

Subsec. (f)(5). Pub. L. 96-465, among other changes, inserted references to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency and substituted reference to section 25 of the State Department Basic Authorities Act of 1956 for reference to section 1021(e) of the Foreign Service Act of 1946.

1978—Subsec. (e)(3). Pub. L. 95-600 inserted “or (B)” before “of paragraph (2)”, substituted “on or before December 31, 1978” for “on or before December 31, 1977” wherever appearing and “which meets the requirements of such subparagraph (a) or (B) (as the case may be),” for “which is a charitable remainder annuity trust, a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).”.

1976—Subsec. (a). Pub. L. 94-455, §§1307(d)(1)(B)(ii), (C), 1313(b)(2), 1902(a)(12)(A), 2009(b)(4)(B), (C), struck out “(including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)” after “or transfers” in provisions preceding par. (1), struck out “Territory,” after “State,” in par. (1), inserted “, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment),” after “encouragement of art” and substituted “which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation,” for “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation,” in par. (2), substituted “such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation,” for “no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation,” in par. (3), and, in provisions following par. (4), substituted “a qualified disclaimer” for “an irrevocable disclaimer” and “such qualified disclaimer” for “such irrevocable disclaimer”.

Subsec. (b). Pub. L. 94-455, §1902(a)(4)(A), struck out provisions under which a bequest in trust, if the surviving spouse of the decedent was entitled for life to all of the net income from the trust and the surviving spouse had a power of appointment over the corpus of that trust exercisable by will in favor of, among others, organizations described in subsec. (a)(2), could be deemed a transfer to the organization by the decedent under certain conditions.

Subsec. (e)(2). Pub. L. 94-455, §2124(e)(2), substituted “(other than an interest described in section 170(f)(3)(B))” for “(other than a remainder interest in a personal residence or farm or an undivided portion of the decedent’s entire interest in property)” in provisions preceding subpar. (A).

Subsec. (e)(3). Pub. L. 94-455, §1304(a), §1906(b)(13)(A), substituted “will executed before December 31, 1977,” for “will executed before September 21, 1974,” and

“amended or conformed on or before December 31, 1977, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1977” for “amended or conformed on or before December 31, 1975, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1975” and struck out “or his delegate” after “Secretary”.

Subsec. (f). Pub. L. 94-455, §1902(a)(4)(B), extended par. (2) by inserting reference to gifts, struck out par. (3) which made a cross reference to section 2 of the Act of Aug. 8, 1946 (60 Stat. 924; 5 U.S.C. 393) for construction of bequests for benefit of the library of the Post Office Department as bequests to or for the use of the United States, redesignated pars. (4)-(11) as (3)-(10), respectively, substituted “For treatment of gifts and bequests for the benefit of the Office of Naval Records and History as gifts or bequests to or for the use of the United States, see section 7222 of title 10, United States Code” for “For exemption of bequests for benefit of Office of Naval Records and Library, Navy Department, see section 2 of the Act of March 4, 1937 (50 Stat. 25; 5 U.S.C. 419b)” in par. (3) as so redesignated, substituted “For treatment of gifts and bequests to or for the benefit of National Park Foundation as gifts or bequests to or for the use of the United States, see section 8 of the Act of December 18, 1967 (16 U.S.C. 191)” for “For exemption of bequests to or for benefit of National Park Service, see section 5 of the Act of July 10, 1935 (49 Stat. 478; 16 U.S.C. 19c)” in par. (4) as so redesignated, and corrected obsolete and inaccurate references in pars. (5)-(10) as so redesignated.

1974—Subsec. (e)(3). Pub. L. 93-483 added par. (3).

1970—Subsec. (b)(2)(C). Pub. L. 91-614 substituted “6 months” for “one year”.

1969—Subsec. (a)(2). Pub. L. 91-172, §201(d)(4)(A) (i), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (a)(3). Pub. L. 91-172, §201(d)(4)(A)(ii), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (e). Pub. L. 91-172, §201(d)(1), substituted substantive provisions for simple reference to sections 503 and 681 of this title in which such substantive provisions were formerly set out.

1958—Subsec. (e). Pub. L. 85-866 substituted “503” for “504”.

1956—Subsec. (b). Act Aug. 6, 1956, designated existing provisions as par. (1) and added par. (2).

#### CHANGE OF NAME

International Communication Agency, and Director thereof, redesignated United States Information Agency, and Director thereof, by section 303 of Pub. L. 97-241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1218(b) of Pub. L. 109-280 applicable to contributions, bequests, and gifts made after Aug. 17, 2006, see section 1218(d) of Pub. L. 109-280, set out as a note under section 170 of this title.

Amendment by section 1234(b) of Pub. L. 109-280 applicable to contributions made after the date which is 180 days after Aug. 17, 2006, see section 1234(d) of Pub. L. 109-280, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1089(b)(3), (5) of Pub. L. 105-34 applicable to transfers in trust after July 28, 1997, with special rule for certain decedents, see section 1089(b)(6) of Pub. L. 105-34, set out as a note under section 664 of this title.

Amendment by section 1530(c)(7) of Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100-203, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 1422(e) of Pub. L. 99-514 provided that: "The amendments made by this section [amending this section and sections 2106 and 2522 of this title] shall apply to transfers and contributions made after December 31, 1986."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 1022(e) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) SUBSECTIONS (a), (b), AND (c).—The amendments made by subsections (a), (b), and (c) [amending this section and sections 170 and 2522 of this title] shall apply to reformations after December 31, 1978; except that such amendments shall not apply to any reformation to which section 2055(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) applies. For purposes of applying clause (iii) of section 2055(e)(3)(C) of such Code (as amended by this section), the 90th day described in such clause shall be treated as not occurring before the 90th day after the date of the enactment of this Act.

"(2) SUBSECTION (d).—The amendment made by subsection (d) [amending section 664 of this title] shall apply to transfers after December 31, 1978.

"(3) STATUTE OF LIMITATIONS.—

"(A) IN GENERAL.—If on the date of the enactment of this Act [July 18, 1984] (or at any time before the date 1 year after such date of enactment), credit or refund of any overpayment of tax attributable to the amendments made by this section is barred by any law or rule of law, such credit or refund of such overpayment may nevertheless be made if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

"(B) NO INTEREST WHERE STATUTE CLOSED ON DATE OF ENACTMENT.—In any case where the making of the credit or refund of the overpayment described in subparagraph (A) is barred on the date of the enactment of this Act [July 18, 1984], no interest shall be allowed with respect to such overpayment (or any related adjustment) for the period before the date 180 days after the date on which the Secretary of the Treasury (or his delegate) is notified that the reformation has occurred."

Amendment by section 1032(b)(2) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98-369, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(3) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97-248, set out as a note under section 501 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Section 423(c)(1) of Pub. L. 97-34 provided that: "The amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after December 31, 1981."

#### EFFECTIVE DATE OF 1980 AMENDMENTS

Section 301(b)(1) of Pub. L. 96-605 provided that: "The amendment made by subsection (a) [amending this section] shall apply in the case of decedents dying after December 31, 1969."

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EXTENSION OF 1978 AMENDMENT; CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

Section 301(b)(2) of Pub. L. 96-605 provided that: "Section 514(b) [section 514(b) of Pub. L. 95-600, set out below] (and section 514(c) [section 514(c) of Pub. L. 95-600, set out below] insofar as it relates to section 514(b)) of the Revenue Act of 1978 shall be applied as if the amendment made by subsection (a) [amending this section] had been included in the amendment made by section 514(a) of such Act [section 514(a) of Pub. L. 95-600, amending this section]."

#### EFFECTIVE DATE OF 1978 AMENDMENT; CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

Section 514(c) of Pub. L. 95-600, as added by Pub. L. 96-222, title I, § 105(a)(4)(B), Apr. 1, 1980, 94 Stat. 219; amended Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) FOR SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply in the case of decedents dying after December 31, 1969.

"(2) FOR SUBSECTION (b).—Subsection (b) [section 514(b) of Pub. L. 95-600, set out below]—

"(A) insofar as it relates to section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to transfers in trust and contributions made after July 31, 1969, and

"(B) insofar as it relates to section 2522 of the Internal Revenue Code of 1986 shall apply to transfers made after December 31, 1969."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 1304(c) of Pub. L. 94-455 provided that: "The amendments made by this section [amending this section] shall apply in the case of decedents dying after December 31, 1969."

Amendment by section 1307(d)(1)(B)(ii), (C) of Pub. L. 94-455, applicable to estates of decedents dying after Dec. 31, 1976, see section 1307(e) of Pub. L. 94-455, set out as a note under section 501 of this title.

Amendment by section 1313(b)(2) of Pub. L. 94-455 applicable on day following Oct. 4, 1976, see section 1313(d) of Pub. L. 94-455, set out as a note under section 501 of this title.

Amendment by section 1902(a)(4) of Pub. L. 94-455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2011 of this title.

Amendment by section 1902(a)(12)(A) of Pub. L. 94-455 applicable with respect to gifts made after Dec. 31, 1976, see section 1902(c)(2) of Pub. L. 94-455, set out as a note under section 2501 of this title.

Amendment by section 2009(b)(4)(B), (C) of Pub. L. 94-455 applicable with respect to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as a note under section 2518 of this title.

Amendment by section 2124(e)(2) of Pub. L. 94-455 applicable with respect to contributions or transfers made after June 13, 1976, see section 2124(e)(4) of Pub. L. 94-455, set out as a note under section 170 of this title.

## EFFECTIVE DATE OF 1974 AMENDMENT

Section 3(b) of Pub. L. 93-483 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1969."

## EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as an Effective Date note under section 2032 of this title.

## EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(1) of Pub. L. 91-172 applicable in the case of decedents dying after Dec. 31, 1969, with specified exceptions, see section 201(g)(4) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment by section 201(d)(4)(A) of Pub. L. 91-172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4)(E) of Pub. L. 91-172, set out as a note under section 170 of this title.

## EFFECTIVE DATE OF 1956 AMENDMENT

Section 3 of act Aug. 6, 1956, provided that: "The amendments made by this Act [amending this section and section 6503 of this title] shall apply in the case of decedents dying after August 16, 1954."

## TRANSFER OF FUNCTIONS

United States International Development Cooperation Agency (other than Agency for International Development and Overseas Private Investment Corporation) abolished and functions and authorities transferred, see sections 6561 and 6562 of Title 22, Foreign Relations and Intercourse.

## SPECIAL DONATIONS

Section 1422(d) of Pub. L. 99-514 provided that: "If the Secretary of the Interior acquires by donation after December 31, 1986, a conservation easement (within the meaning of section 2(h) of S. 720, 99th Congress, 1st Session, as in effect on August 16, 1986) [see Pub. L. 99-420, Sept. 25, 1986, §102(h), 99 Stat. 955, 957], such donation shall qualify for treatment under section 2055(f) or 2522(d) of the Internal Revenue Code of 1954 [now 1986], as added by this section."

## CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

Section 514(b) of Pub. L. 95-600, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Under regulations prescribed by the Secretary of the Treasury or his delegate, in the case of trusts created before December 31, 1977, provisions comparable to section 2055(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall be deemed to be included in sections 170 and 2522 of the Internal Revenue Code of 1986."

## EXTENSION OF PERIOD FOR FILING CLAIM FOR REFUND

Section 1304(b) of Pub. L. 94-455, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "A claim for refund or credit of an overpayment of the tax imposed by section 2001 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] allowable under section 2055(e)(3) of such Code (as amended by subsection (a)) shall not be denied because of the expiration of the time for filing such a claim under section 6511(a) if such claim is filed not later than June 30, 1978."

## § 2056. Bequests, etc., to surviving spouse

## (a) Allowance of marital deduction

For purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsection (b), be determined by

deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

## (b) Limitation in the case of life estate or other terminable interest

## (1) General rule

Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed under this section with respect to such interest—

(A) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and

(B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse;

and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under subparagraphs (A) and (B))—

(C) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For purposes of this paragraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

## (2) Interest in unidentified assets

Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

## (3) Interest of spouse conditional on survival for limited period

For purposes of this subsection, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if—

(A) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event; and

(B) such termination or failure does not in fact occur.

**(4) Valuation of interest passing to surviving spouse**

In determining for purposes of subsection (a) the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this section—

(A) there shall be taken into account the effect which the tax imposed by section 2001, or any estate, succession, legacy, or inheritance tax, has on the net value to the surviving spouse of such interest; and

(B) where such interest or property is encumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined.

**(5) Life estate with power of appointment in surviving spouse**

In the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the interest, or such specific portion, to any person other than the surviving spouse—

(A) the interest or such portion thereof so passing shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of the interest so passing shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if such power in the surviving spouse to appoint the entire interest, or such specific portion thereof, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

**(6) Life insurance or annuity payments with power of appointment in surviving spouse**

In the case of an interest in property passing from the decedent consisting of proceeds under a life insurance, endowment, or annuity contract, if under the terms of the contract such proceeds are payable in installments or are held by the insurer subject to an agreement to pay interest thereon (whether the proceeds, on the termination of any interest payments, are payable in a lump sum or in annual or more frequent installments), and such installment or interest payments are payable annually or at more frequent intervals, commencing not later than 13 months after the decedent's death, and all amounts, or a specific portion of all such amounts, payable during the life of the surviving spouse are payable only to such

spouse, and such spouse has the power to appoint all amounts, or such specific portion, payable under such contract (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), with no power in any other person to appoint such amounts to any person other than the surviving spouse—

(A) such amounts shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of such amounts shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if, under the terms of the contract, such power in the surviving spouse to appoint such amounts, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

**(7) Election with respect to life estate for surviving spouse**

**(A) In general**

In the case of qualified terminable interest property—

(i) for purposes of subsection (a), such property shall be treated as passing to the surviving spouse, and

(ii) for purposes of paragraph (1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

**(B) Qualified terminable interest property defined**

For purposes of this paragraph—

**(i) In general**

The term “qualified terminable interest property” means property—

(I) which passes from the decedent,

(II) in which the surviving spouse has a qualifying income interest for life, and

(III) to which an election under this paragraph applies.

**(ii) Qualifying income interest for life**

The surviving spouse has a qualifying income interest for life if—

(I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and

(II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Subclause (II) shall not apply to a power exercisable only at or after the death of the surviving spouse. To the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

**(iii) Property includes interest therein**

The term “property” includes an interest in property.

**(iv) Specific portion treated as separate property**

A specific portion of property shall be treated as separate property.

**(v) Election**

An election under this paragraph with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable.

**(C) Treatment of survivor annuities**

In the case of an annuity included in the gross estate of the decedent under section 2039 (or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033) where only the surviving spouse has the right to receive payments before the death of such surviving spouse—

(i) the interest of such surviving spouse shall be treated as a qualifying income interest for life, and

(ii) the executor shall be treated as having made an election under this subsection with respect to such annuity unless the executor otherwise elects on the return of tax imposed by section 2001.

An election under clause (ii), once made, shall be irrevocable.

**(8) Special rule for charitable remainder trusts**

**(A) In general**

If the surviving spouse of the decedent is the only beneficiary of a qualified charitable remainder trust who is not a charitable beneficiary nor an ESOP beneficiary, paragraph (1) shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

**(B) Definitions**

For purposes of subparagraph (A)—

**(i) Charitable beneficiary**

The term “charitable beneficiary” means any beneficiary which is an organization described in section 170(c).

**(ii) ESOP beneficiary**

The term “ESOP beneficiary” means any beneficiary which is an employee stock ownership plan (as defined in section 4975(e)(7)) that holds a remainder interest in qualified employer securities (as defined in section 664(g)(4)) to be transferred to such plan in a qualified gratuitous transfer (as defined in section 664(g)(1)).

**(iii) Qualified charitable remainder trust**

The term “qualified charitable remainder trust” means a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664).

**(9) Denial of double deduction**

Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same decedent.

**(10) Specific portion**

For purposes of paragraphs (5), (6), and (7)(B)(iv), the term “specific portion” only includes a portion determined on a fractional or percentage basis.

**(c) Definition**

For purposes of this section, an interest in property shall be considered as passing from the decedent to any person if and only if—

(1) such interest is bequeathed or devised to such person by the decedent;

(2) such interest is inherited by such person from the decedent;

(3) such interest is the dower or curtesy interest (or statutory interest in lieu thereof) of such person as surviving spouse of the decedent;

(4) such interest has been transferred to such person by the decedent at any time;

(5) such interest was, at the time of the decedent's death, held by such person and the decedent (or by them and any other person) in joint ownership with right of survivorship;

(6) the decedent had a power (either alone or in conjunction with any person) to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default on the release or nonexercise of such power; or

(7) such interest consists of proceeds of insurance on the life of the decedent receivable by such person.

Except as provided in paragraph (5) or (6) of subsection (b), where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for purposes of subparagraphs (A) and (B) of subsection (b)(1), be considered as passing from the decedent to a person other than the surviving spouse.

**(d) Disallowance of marital deduction where surviving spouse not United States citizen**

**(1) In general**

Except as provided in paragraph (2), if the surviving spouse of the decedent is not a citizen of the United States—

(A) no deduction shall be allowed under subsection (a), and

(B) section 2040(b) shall not apply.

**(2) Marital deduction allowed for certain transfers in trust**

**(A) In general**

Paragraph (1) shall not apply to any property passing to the surviving spouse in a qualified domestic trust.

**(B) Special rule**

If any property passes from the decedent to the surviving spouse of the decedent, for purposes of subparagraph (A), such property shall be treated as passing to such spouse in a qualified domestic trust if—

(i) such property is transferred to such a trust before the date on which the return of the tax imposed by this chapter is made, or

(ii) such property is irrevocably assigned to such a trust under an irrevocable as-

signment made on or before such date which is enforceable under local law.

**(3) Allowance of credit to certain spouses**

If—

(A) property passes to the surviving spouse of the decedent (hereinafter in this paragraph referred to as the “first decedent”),

(B) without regard to this subsection, a deduction would be allowable under subsection (a) with respect to such property, and

(C) such surviving spouse dies and the estate of such surviving spouse is subject to the tax imposed by this chapter,

the Federal estate tax paid (or treated as paid under section 2056A(b)(7)) by the first decedent with respect to such property shall be allowed as a credit under section 2013 to the estate of such surviving spouse and the amount of such credit shall be determined under such section without regard to when the first decedent died and without regard to subsection (d)(3) of such section.

**(4) Special rule where resident spouse becomes citizen**

Paragraph (1) shall not apply if—

(A) the surviving spouse of the decedent becomes a citizen of the United States before the day on which the return of the tax imposed by this chapter is made, and

(B) such spouse was a resident of the United States at all times after the date of the death of the decedent and before becoming a citizen of the United States.

**(5) Reformations permitted**

**(A) In general**

In the case of any property with respect to which a deduction would be allowable under subsection (a) but for this subsection, the determination of whether a trust is a qualified domestic trust shall be made—

(i) as of the date on which the return of the tax imposed by this chapter is made, or

(ii) if a judicial proceeding is commenced on or before the due date (determined with regard to extensions) for filing such return to change such trust into a trust which is a qualified domestic trust, as of the time when the changes pursuant to such proceeding are made.

**(B) Statute of limitations**

If a judicial proceeding described in subparagraph (A)(ii) is commenced with respect to any trust, the period for assessing any deficiency of tax attributable to any failure of such trust to be a qualified domestic trust shall not expire before the date 1 year after the date on which the Secretary is notified that the trust has been changed pursuant to such judicial proceeding or that such proceeding has been terminated.

(Aug. 16, 1954, ch. 736, 68A Stat. 392; Pub. L. 89-621, §1(a), Oct. 4, 1966, 80 Stat. 872; Pub. L. 94-455, title XIX, §1902(a)(12)(A), title XX, §§2002(a), 2009(b)(4)(D), (E), Oct. 4, 1976, 90 Stat. 1805, 1854, 1894; Pub. L. 95-600, title VII, §702(g)(1), (2), Nov. 6, 1978, 92 Stat. 2930; Pub. L.

97-34, title IV, §403(a)(1), (d)(1), Aug. 13, 1981, 95 Stat. 301, 302; Pub. L. 97-448, title I, §104(a)(2)(A), (8), Jan. 12, 1983, 96 Stat. 2380, 2381; Pub. L. 98-369, div. A, title X, §1027(a), July 18, 1984, 98 Stat. 1031; Pub. L. 100-647, title V, §5033(a)(1), title VI, §6152(a), Nov. 10, 1988, 102 Stat. 3670, 3725; Pub. L. 101-239, title VII, §7815(d)(4)(A), (5), (6), (8), 7816(q), Dec. 19, 1989, 103 Stat. 2415, 2416, 2423; Pub. L. 101-508, title XI, §§11701(l)(1), 11702(g)(5), Nov. 5, 1990, 104 Stat. 1388-513, 1388-516; Pub. L. 102-486, title XIX, §1941(a), Oct. 24, 1992, 106 Stat. 3036; Pub. L. 105-34, title XIII, §1311(a), title XV, §1530(c)(8), Aug. 5, 1997, 111 Stat. 1044, 1078.)

**AMENDMENTS**

1997—Subsec. (b)(7)(C). Pub. L. 105-34, §1311(a), inserted “(or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033)” after “section 2039”.

Subsec. (b)(8). Pub. L. 105-34, §1530(c)(8), amended par. (8) generally. Prior to amendment, par. (8) read as follows:

“(8) SPECIAL RULE FOR CHARITABLE REMAINDER TRUSTS.—

“(A) IN GENERAL.—If the surviving spouse of the decedent is the only noncharitable beneficiary of a qualified charitable remainder trust, paragraph (1) shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

“(B) DEFINITIONS.—For purposes of subparagraph (A)—

“(i) NONCHARITABLE BENEFICIARY.—The term ‘non-charitable beneficiary’ means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

“(ii) QUALIFIED CHARITABLE REMAINDER TRUST.—The term ‘qualified charitable remainder trust’ means a charitable remainder annuity trust or charitable remainder unitrust (described in section 664).”

1992—Subsec. (b)(10). Pub. L. 102-486 added par. (10).

1990—Subsec. (d)(3). Pub. L. 101-508, §11702(g)(5), substituted “section 2056A(b)(7)” for “section 2056A(b)(6)”.

Subsec. (d)(4), (5). Pub. L. 101-508, §11701(l)(1), redesignated par. (4) relating to reformations permitted as par. (5).

1989—Subsec. (b)(7)(C). Pub. L. 101-239, §7816(q), inserted “included in the gross estate of the decedent under section 2039” after “an annuity”.

Subsec. (d)(2)(B). Pub. L. 101-239, §7815(d)(4)(A), substituted “Special rule” for “Property passing outside of probate estate” in heading and amended text generally. Prior to amendment, text read as follows: “If any property passes from the decedent to the surviving spouse of the decedent outside of the decedent’s probate estate, for purposes of subparagraph (A), such property shall be treated as passing to such spouse in a qualified domestic trust if such property is transferred to such a trust before the day on which the return of the tax imposed by section 2001 is made.”

Subsec. (d)(3). Pub. L. 101-239, §7815(d)(6), substituted “this chapter” for “section 2001” in subpar. (C) and inserted “and without regard to subsection (d)(3) of such section” after “first decedent died” in concluding provisions.

Subsec. (d)(4). Pub. L. 101-239, §7815(d)(8), added par. (4) relating to reformations permitted.

Pub. L. 101-239, §7815(d)(5), added par. (4) relating to special rule where resident spouse becomes citizen.

1988—Subsec. (b)(7)(C). Pub. L. 100-647, §6152(a), added subpar. (C).

Subsec. (d). Pub. L. 100-647, §5033(a)(1), added subsec. (d).

1984—Subsec. (b)(7)(B)(ii)(I). Pub. L. 98-369 inserted “, or has a usufruct interest for life in the property”.



1983—Subsec. (b)(7)(B)(ii). Pub. L. 97-448, §104(a)(8), inserted provision that an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

Subsec. (b)(9). Pub. L. 97-448, §104(a)(2)(A), added par. (9).

1981—Subsec. (a). Pub. L. 97-34, §403(a)(1)(B), substituted “subsection (b)” for “subsections (b) and (c)”.

Subsec. (b)(7), (8). Pub. L. 97-34, §403(d)(1), added pars. (7) and (8).

Subsecs. (c), (d). Pub. L. 97-34, §403(a)(1)(A), redesignated subsec. (d) as (c) and struck out former subsec. (c) relating to limitation on aggregate of deductions.

1978—Subsec. (c)(1)(B). Pub. L. 95-600 inserted in cl. (ii) “required to be included in a gift tax return” after “with respect to any gift” and inserted following cl. (ii) “For purposes of this subparagraph, a gift which is includible in the gross estate of the donor by reason of section 2035 shall not be taken into account”.

1976—Subsec. (a). Pub. L. 94-455, §2009(b)(4)(E), substituted “subsections (b) and (c)” for “subsections (b), (c), and (d)”.

Subsec. (c)(1). Pub. L. 94-455, §2002(a), designated existing provisions as subpar. (A), substituted provisions that the aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed the greater of \$250,000 or 50 percent of the value of the adjusted gross estate as defined in par. (2) for provisions that the aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed 50 percent of the value of the adjusted gross estate as defined in par. (2), and added subpars. (B) and (C).

Subsec. (c)(2)(B). Pub. L. 94-455, §1902(a)(12)(A), struck out “Territory,” after “State,” in provisions preceding cl. (i).

Subsecs. (d), (e). Pub. L. 94-455, §2009(b)(4)(D), redesignated subsec. (e) as (d). Former subsec. (d), which related to disclaimers by the surviving spouse or by other persons, was struck out.

1966—Subsec. (d)(2). Pub. L. 89-621 provided that if the disclaimer is made by the person before the date prescribed for the filing of the estate tax return and if the person does not accept the interest before making the disclaimer, the interest shall, for purposes of this section, be considered as passing from the decedent to the surviving spouse.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 1311(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

Amendment by section 1530(c)(8) of Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 1941(c) of Pub. L. 102-486 provided that:

“(1) SUBSECTION (a).—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Oct. 24, 1992].

“(B) EXCEPTION.—The amendment made by subsection (a) shall not apply to any interest in property which passes (or has passed) to the surviving spouse of the decedent pursuant to a will (or revocable trust) in existence on the date of the enactment of this Act if—

“(i) the decedent dies on or before the date 3 years after such date of enactment, or

“(ii) the decedent was, on such date of enactment, under a mental disability to change the disposition

of his property and did not regain his competence to dispose of such property before the date of his death.

The preceding sentence shall not apply if such will (or revocable trust) is amended at any time after such date of enactment in any respect which will increase the amount of the interest which so passes or alters the terms of the transfer by which the interest so passes.

“(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 2523 of this title] shall apply to gifts made after the date of the enactment of this Act [Oct. 24, 1992].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11701(l)(1) of Pub. L. 101-508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101-239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101-508, set out as a note under section 42 of this title.

Amendment by section 11702(g)(5) of Pub. L. 101-508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 11702(j) of Pub. L. 101-508, set out as a note under section 59 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 7815(d)(4)(B) of Pub. L. 101-239 provided that: “In the case of the estate of a decedent dying before the date of the enactment of this Act [Dec. 19, 1989], the period during which the transfer (or irrevocable assignment) referred to in section 2056(d)(2)(B) of the Internal Revenue Code of 1986 (as amended by subparagraph (A)) may be made shall not expire before the date 1 year after such date of enactment.”

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 5033(d)(1) of Pub. L. 100-647 provided that: “The amendments made by subsections (a) and (c) [enacting section 2056A of this title and amending this section and section 2106 of this title] shall apply to estates of the decedents dying after the date of the enactment of this Act [Nov. 10, 1988].”

Section 6152(c) of Pub. L. 100-647 provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection—

“(A) the amendment made by subsection (a) [amending this section] shall apply with respect to decedents dying after December 31, 1981, and

“(B) the amendment made by subsection (b) [amending section 2523 of this title] shall apply to transfers after December 31, 1981.

“(2) NOT TO APPLY TO EXTENT INCONSISTENT WITH PRIOR RETURN.—In the case of any estate or gift tax return filed before the date of the enactment of this Act [Nov. 10, 1988], the amendments made by this section [amending this section and section 2523 of this title] shall not apply to the extent such amendments would be inconsistent with the treatment of the annuity on such return unless the executor or donor (as the case may be) otherwise elects under this paragraph before the day 2 years after the date of the enactment of this Act.

“(3) EXTENSION OF TIME FOR ELECTION OUT.—The time for making an election under section 2056(b)(7)(C)(ii) or 2523(f)(6)(B) of the 1986 Code (as added by this subsection) shall not expire before the day 2 years after the date of the enactment of this Act (and, if such election is made within the time permitted under this paragraph, the requirement of such section 2056(b)(7)(C)(ii) that it be made on the return shall not apply).”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the amendment made by section 403 of the Economic

Recovery Tax Act of 1981 [Pub. L. 97-34, see Effective Date of 1981 Amendment note below], see section 1027(c) of Pub. L. 98-369, set out as a note under section 2053 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Section 403(e) of Pub. L. 97-34, as amended by Pub. L. 97-448, title I, §104(a)(10), Jan. 12, 1983, 96 Stat. 2381; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) Except as otherwise provided in this subsection, the amendments made by this section [enacting sections 2044 and 2207A of this title, amending this section and sections 691, 2012, 2035, 2040, 2045, 2046, 2519, 2523, 2602, and 6019 of this title, and repealing sections 2515 and 2515A of this title] shall apply to the estates of decedents dying after December 31, 1981.

“(2) The amendments made by paragraphs (1), (2), and (3)(A) of subsection (b) [amending sections 2523 and 6019 of this title], subparagraphs (B) and (C) of subsection (c)(3) [amending section 6019 of this title and repealing sections 2515 and 2515A of this title], and paragraphs (2) and (3)(B) of subsection (d), and paragraph (4)(A) of subsection (d) (to the extent related to the tax imposed by chapter 12 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) [enacting sections 2207A and 2519 of this title and amending section 2523 of this title] shall apply to gifts made after December 31, 1981.

“(3) If—

“(A) the decedent dies after December 31, 1981,

“(B) by reason of the death of the decedent property passes from the decedent or is acquired from the decedent under a will executed before the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981], or a trust created before such date, which contains a formula expressly providing that the spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by Federal law,

“(C) the formula referred to in subparagraph (B) was not amended to refer specifically to an unlimited marital deduction at any time after the date which is 30 days after the date of enactment of this Act [Aug. 13, 1981], and before the death of the decedent, and

“(D) the State does not enact a statute applicable to such estate which construes this type of formula as referring to the marital deduction allowable by Federal law as amended by subsection (a), then the amendment made by subsection (a) shall not apply to the estate of such decedent.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(g)(3) of Pub. L. 95-600 provided that: “The amendment made by this subsection [amending this section] shall apply to the estates of decedents dying after December 31, 1976.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 2002(d)(1) of Pub. L. 94-455 provided that:

“(1)(A) Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1976.

“(B) If—

“(i) the decedent dies after December 31, 1976, and before January 1, 1979,

“(ii) by reason of the death of the decedent property passes from the decedent or is acquired from the decedent under a will executed before January 1, 1977, or a trust created before such date, which contains a formula expressly providing that the spouse is to re-

ceive the maximum amount of property qualifying for the marital deduction allowable by Federal law,

“(iii) the formula referred to in clause (ii) was not amended at any time after December 31, 1976, and before the death of the decedent, and

“(iv) the State does not enact a statute applicable to such estate which construes this type of formula as referring to the marital deduction allowable by Federal law as amended by subsection (a), then the amendment made by subsection (a) shall not apply to the estate of such decedent.”

Amendment by section 2009(b)(4)(D), (E) of Pub. L. 94-455 applicable with respect to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as an Effective Date note under section 2518 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Section 1(b) of Pub. L. 89-621 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying on or after the date of the enactment of this Act [Oct. 4, 1966].”

#### COMMENCEMENT OF JUDICIAL PROCEEDING TO REFORM TRUST

Section 11701(i)(2) of Pub. L. 101-508 provided that: “The period during which a proceeding may be commenced under section 2056(d)(5)(A)(ii) of the Internal Revenue Code of 1986 (as redesignated by paragraph (1)) shall not expire before the date 6 months after the date of the enactment of this Act [Nov. 5, 1990].”

#### APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100-647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

Section 7815(d)(14) of Pub. L. 101-239 provided that: “In the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of the 1988 Act [Pub. L. 100-647, enacting section 2056A of this title and amending this section and sections 2106 and 2523 of this title] shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions. In the case of the estate of an individual dying before the date 3 years after the date of the enactment of this Act [Dec. 19, 1989], or a gift by an individual before the date 3 years after the date of the enactment of this Act, the requirement of the preceding sentence that the individual not be a citizen or resident of the United States shall not apply.”

#### DISCLAIMER OF INTEREST ARISING FROM ESTATES OF PERSONS DYING BEFORE OCT. 4, 1966, HAVING ESTATE TAX RETURN FILING DATE ON OR AFTER JAN. 1, 1965

Section 1(c) of Pub. L. 89-621 provided that in the case of a decedent dying before Oct. 4, 1966, for which the date prescribed for filing estate tax return was on or after Jan. 1, 1965, and as a result of a disclaimer, the surviving spouse became entitled to receive such interest, then such interest was to be considered as having passed from the decedent to the surviving spouse under certain conditions, with a limit on the amount of deductions allowed.

### § 2056A. Qualified domestic trust

#### (a) Qualified domestic trust defined

For purposes of this section and section 2056(d), the term “qualified domestic trust” means, with respect to any decedent, any trust if—

(1) the trust instrument—

(A) except as provided in regulations prescribed by the Secretary, requires that at

least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation, and

(B) provides that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from such distribution the tax imposed by this section on such distribution,

(2) such trust meets such requirements as the Secretary may by regulations prescribe to ensure the collection of any tax imposed by subsection (b), and

(3) an election under this section by the executor of the decedent applies to such trust.

**(b) Tax treatment of trust**

**(1) Imposition of estate tax**

There is hereby imposed an estate tax on—

(A) any distribution before the date of the death of the surviving spouse from a qualified domestic trust, and

(B) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

**(2) Amount of tax**

**(A) In general**

In the case of any taxable event, the amount of the estate tax imposed by paragraph (1) shall be the amount equal to—

(i) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the sum of—

(I) the amount involved in such taxable event, plus

(II) the aggregate amount involved in previous taxable events with respect to qualified domestic trusts of such decedent, reduced by

(ii) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the amount referred to in clause (i)(II).

**(B) Tentative tax where tax of decedent not finally determined**

**(i) In general**

If the tax imposed on the estate of the decedent under section 2001 is not finally determined before the taxable event, the amount of the tax imposed by paragraph (1) on such event shall be determined by using the highest rate of tax in effect under section 2001 as of the date of the decedent's death.

**(ii) Refund of excess when tax finally determined**

If—

(I) the amount of the tax determined under clause (i), exceeds

(II) the tax determined under subparagraph (A) on the basis of the final determination of the tax imposed by section 2001 on the estate of the decedent,

such excess shall be allowed as a credit or refund (with interest) if claim therefor is filed not later than 1 year after the date of such final determination.

**(C) Special rule where decedent has more than 1 qualified domestic trust**

If there is more than 1 qualified domestic trust with respect to any decedent, the amount of the tax imposed by paragraph (1) with respect to such trusts shall be determined by using the highest rate of tax in effect under section 2001 as of the date of the decedent's death (and the provisions of paragraph (3)(B) shall not apply) unless, pursuant to a designation made by the decedent's executor, there is 1 person—

(i) who is an individual citizen of the United States or a domestic corporation and is responsible for filing all returns of tax imposed under paragraph (1) with respect to such trusts and for paying all tax so imposed, and

(ii) who meets such requirements as the Secretary may by regulations prescribe.

**(3) Certain lifetime distributions exempt from tax**

**(A) Income distributions**

No tax shall be imposed by paragraph (1)(A) on any distribution of income to the surviving spouse.

**(B) Hardship exemption**

No tax shall be imposed by paragraph (1)(A) on any distribution to the surviving spouse on account of hardship.

**(4) Tax where trust ceases to qualify**

If any qualified domestic trust ceases to meet the requirements of paragraphs (1) and (2) of subsection (a), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date of such cessation.

**(5) Due date**

**(A) Tax on distributions**

The estate tax imposed by paragraph (1)(A) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs; except that the estate tax imposed by paragraph (1)(A) on distributions during the calendar year in which the surviving spouse dies shall be due and payable not later than the date on which the estate tax imposed by paragraph (1)(B) is due and payable.

**(B) Tax at death of spouse**

The estate tax imposed by paragraph (1)(B) shall be due and payable on the date 9 months after the date of such death.

**(6) Liability for tax**

Each trustee shall be personally liable for the amount of the tax imposed by paragraph (1). Rules similar to the rules of section 2204 shall apply for purposes of the preceding sentence.

**(7) Treatment of tax**

For purposes of section 2056(d), any tax paid under paragraph (1) shall be treated as a tax

paid under section 2001 with respect to the estate of the decedent.

**(8) Lien for tax**

For purposes of section 6324, any tax imposed by paragraph (1) shall be treated as an estate tax imposed under this chapter with respect to a decedent dying on the date of the taxable event (and the property involved shall be treated as the gross estate of such decedent).

**(9) Taxable event**

The term “taxable event” means the event resulting in tax being imposed under paragraph (1).

**(10) Certain benefits allowed**

**(A) In general**

If any property remaining in the qualified domestic trust on the date of the death of the surviving spouse is includible in the gross estate of such spouse for purposes of this chapter (or would be includible if such spouse were a citizen or resident of the United States), any benefit which is allowable (or would be allowable if such spouse were a citizen or resident of the United States) with respect to such property to the estate of such spouse under section 2014, 2032, 2032A, 2055, 2056, 2058, or 6166 shall be allowed for purposes of the tax imposed by paragraph (1)(B).

**(B) Section 303**

If the estate of the surviving spouse meets the requirements of section 303 with respect to any property described in subparagraph (A), for purposes of section 303, the tax imposed by paragraph (1)(B) with respect to such property shall be treated as a Federal estate tax payable with respect to the estate of the surviving spouse.

**(C) Section 6161(a)(2)**

The provisions of section 6161(a)(2) shall apply with respect to the tax imposed by paragraph (1)(B), and the reference in such section to the executor shall be treated as a reference to the trustees of the trust.

**(11) Special rule where distribution tax paid out of trust**

For purposes of this subsection, if any portion of the tax imposed by paragraph (1)(A) with respect to any distribution is paid out of the trust, an amount equal to the portion so paid shall be treated as a distribution described in paragraph (1)(A).

**(12) Special rule where spouse becomes citizen**

If the surviving spouse of the decedent becomes a citizen of the United States and if—

(A) such spouse was a resident of the United States at all times after the date of the death of the decedent and before such spouse becomes a citizen of the United States,

(B) no tax was imposed by paragraph (1)(A) with respect to any distribution before such spouse becomes such a citizen, or

(C) such spouse elects—

(i) to treat any distribution on which tax was imposed by paragraph (1)(A) as a tax-

able gift made by such spouse for purposes of—

(I) section 2001, and

(II) determining the amount of the tax imposed by section 2501 on actual taxable gifts made by such spouse during the year in which the spouse becomes a citizen or any subsequent year, and

(ii) to treat any reduction in the tax imposed by paragraph (1)(A) by reason of the credit allowable under section 2010 with respect to the decedent as a credit allowable to such surviving spouse under section 2505 for purposes of determining the amount of the credit allowable under section 2505 with respect to taxable gifts made by the surviving spouse during the year in which the spouse becomes a citizen or any subsequent year,

paragraph (1)(A) shall not apply to any distributions after such spouse becomes such a citizen (and paragraph (1)(B) shall not apply).

**(13) Coordination with section 1015**

For purposes of section 1015, any distribution on which tax is imposed by paragraph (1)(A) shall be treated as a transfer by gift, and any tax paid under paragraph (1)(A) shall be treated as a gift tax.

**(14) Coordination with terminable interest rules**

Any interest in a qualified domestic trust shall not be treated as failing to meet the requirements of paragraph (5) or (7) of section 2056(b) merely by reason of any provision of the trust instrument permitting the withholding from any distribution of an amount to pay the tax imposed by paragraph (1) on such distribution.

**(15) No tax on certain distributions**

No tax shall be imposed by paragraph (1) on any distribution to the surviving spouse to the extent such distribution is to reimburse such surviving spouse for any tax imposed by subtitle A on any item of income of the trust to which such surviving spouse is not entitled under the terms of the trust.

**(c) Definitions**

For purposes of this section—

**(1) Property includes interest therein**

The term “property” includes an interest in property.

**(2) Income**

Except as provided in regulations, the term “income” has the meaning given to such term by section 643(b).

**(3) Trust**

To the extent provided in regulations prescribed by the Secretary, the term “trust” includes other arrangements which have substantially the same effect as a trust.

**(d) Election**

An election under this section with respect to any trust shall be made by the executor on the return of the tax imposed by section 2001. Such

an election, once made, shall be irrevocable. No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.

#### (e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations under which there may be treated as a qualified domestic trust any annuity or other payment which is includible in the decedent's gross estate and is by its terms payable for life or a term of years.

(Added Pub. L. 100-647, title V, § 5033(a)(2), Nov. 10, 1988, 102 Stat. 3670; amended Pub. L. 101-239, title VII, § 7815(d)(7), (9)-(13), (15), Dec. 19, 1989, 103 Stat. 2415-2418; Pub. L. 101-508, title XI, §§ 11702(g)(2)(A), (B), (3)(A), (4), 11704(a)(15), Nov. 5, 1990, 104 Stat. 1388-515, 1388-516, 1388-518; Pub. L. 105-34, title XIII, §§ 1312(a), 1314(a), Aug. 5, 1997, 111 Stat. 1044, 1045; Pub. L. 107-16, title V, § 532(c)(6), June 7, 2001, 115 Stat. 74.)

#### AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

#### AMENDMENTS

2001—Subsec. (b)(10)(A). Pub. L. 107-16, §§ 532(c)(6), 901, temporarily struck out “2011,” before “2014,” and inserted “2058,” after “2056.” See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (a)(1)(A). Pub. L. 105-34, § 1314(a), inserted “except as provided in regulations prescribed by the Secretary,” before “requires”.

Subsec. (c)(3). Pub. L. 105-34, § 1312(a), added par. (3).  
1990—Subsec. (a)(1). Pub. L. 101-508, § 11702(g)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation and that no distribution from the trust may be made without the approval of such a trustee.”.

Subsec. (b)(2)(B)(ii). Pub. L. 101-508, § 11704(a)(15), substituted “therefor” for “therefore” in concluding provisions.

Subsec. (b)(10)(A). Pub. L. 101-508, § 11702(g)(4), substituted “section 2011, 2014, 2032” for “section 2032”.

Subsec. (b)(14), (15). Pub. L. 101-508, § 11702(g)(2)(B), added pars. (14) and (15).

Subsec. (d). Pub. L. 101-508, § 11702(g)(3)(A), inserted at end “No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.”

1989—Subsec. (a)(1). Pub. L. 101-239, § 7815(d)(7)(A)(i), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.”.

Subsec. (a)(2) to (4). Pub. L. 101-239, § 7815(d)(7)(A)(ii), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: “the surviving spouse of the decedent is entitled to all the income from the property in such trust, payable annually or at more frequent intervals.”.

Subsec. (b)(1)(A). Pub. L. 101-239, § 7815(d)(7)(C), struck out “other than a distribution of income required under subsection (a)(2)” after “qualified domestic trust”.

Subsec. (b)(2)(B)(ii). Pub. L. 101-239, § 7815(d)(11), inserted “(with interest)” after “credit or refund”.

Subsec. (b)(2)(C). Pub. L. 101-239, § 7815(d)(12), added subpar. (C).

Subsec. (b)(3). Pub. L. 101-239, § 7815(d)(7)(B), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 101-239, § 7815(d)(7)(D), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “If any person other than an individual citizen of the United States or a domestic corporation becomes a trustee of a qualified domestic trust (or such trust ceases to meet the requirements of subsection (a)(3)), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date on which such person became such a trustee or the date of such cessation, as the case may be.”

Pub. L. 101-239, § 7815(d)(7)(B), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 101-239, § 7815(d)(15), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The estate tax imposed by paragraph (1) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs.”

Pub. L. 101-239, § 7815(d)(7)(B), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(6) to (9). Pub. L. 101-239, § 7815(d)(7)(B), redesignated pars. (5) to (8) as (6) to (9), respectively.

Subsec. (b)(10) to (13). Pub. L. 101-239, § 7815(d)(9), added pars. (10) to (13).

Subsec. (c)(2). Pub. L. 101-239, § 7815(d)(10), substituted “Except as provided in regulations, the term” for “The term”.

Subsec. (e). Pub. L. 101-239, § 7815(d)(13), added subsec. (e).

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 1312(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

Section 1314(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11702(g)(2), (4) of Pub. L. 101-508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 11702(j) of Pub. L. 101-508, set out as a note under section 59 of this title.

Section 11702(g)(3)(B) of Pub. L. 101-508 provided that: “The amendment made by subparagraph (A) [amending this section] shall not apply to any election made before the date 6 months after the date of the enactment of this Act [Nov. 5, 1990].”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section applicable to estates of decedents dying after Nov. 10, 1988, see section 5033(d)(1) of Pub. L. 100-647, set

out as an Effective Date of 1988 Amendment note under section 2056 of this title.

#### TRANSITIONAL RULE

Section 1303 of Pub. L. 105-34 provided that:

“(a) GENERAL RULE.—In the case of any trust created under an instrument executed before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990], such trust shall be treated as meeting the requirements of paragraph (1) of section 2056A(a) of the Internal Revenue Code of 1986 if the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.

“(b) EFFECTIVE DATE.—The provisions of subsection (a) shall take effect as if included in the provisions of section 11702(g) of the Revenue Reconciliation Act of 1990 [Pub. L. 101-508].”

#### APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100-647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

For provisions directing that in the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, this section shall not apply to the extent such section would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions, but that in the case of the estate of an individual dying before the date 3 years after Dec. 19, 1989, or a gift by an individual before the date 3 years after Dec. 19, 1989, the requirement of the preceding provision that the individual not be a citizen or resident of the United States shall not apply, see section 7815(d)(14) of Pub. L. 101-239, set out as a note under section 2056 of this title.

### § 2057. Family-owned business interests

#### (a) General rule

##### (1) Allowance of deduction

For purposes of the tax imposed by section 2001, in the case of an estate of a decedent to which this section applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent which are described in subsection (b)(2).

##### (2) Maximum deduction

The deduction allowed by this section shall not exceed \$675,000.

##### (3) Coordination with unified credit

###### (A) In general

Except as provided in subparagraph (B), if this section applies to an estate, the applicable exclusion amount under section 2010 shall be \$625,000.

###### (B) Increase in unified credit if deduction is less than \$675,000

If the deduction allowed by this section is less than \$675,000, the amount of the applicable exclusion amount under section 2010 shall be increased (but not above the amount which would apply to the estate without regard to this section) by the excess of \$675,000 over the amount of the deduction allowed.

#### (b) Estates to which section applies

##### (1) In general

This section shall apply to an estate if—

(A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States,

(B) the executor elects the application of this section and files the agreement referred to in subsection (h),

(C) the sum of—

(i) the adjusted value of the qualified family-owned business interests described in paragraph (2), plus

(ii) the amount of the gifts of such interests determined under paragraph (3),

exceeds 50 percent of the adjusted gross estate, and

(D) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

(i) such interests were owned by the decedent or a member of the decedent's family, and

(ii) there was material participation (within the meaning of section 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

#### (2) Includible qualified family-owned business interests

The qualified family-owned business interests described in this paragraph are the interests which—

(A) are included in determining the value of the gross estate, and

(B) are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of section 2032A(e)(9)).

#### (3) Includible gifts of interests

The amount of the gifts of qualified family-owned business interests determined under this paragraph is the sum of—

(A) the amount of such gifts from the decedent to members of the decedent's family taken into account under section 2001(b)(1)(B), plus

(B) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent's spouse) between the date of the gift and the date of the decedent's death.

#### (c) Adjusted gross estate

For purposes of this section, the term “adjusted gross estate” means the value of the gross estate—

(1) reduced by any amount deductible under paragraph (3) or (4) of section 2053(a), and

(2) increased by the excess of—

(A) the sum of—

(i) the amount of gifts determined under subsection (b)(3), plus

(ii) the amount (if more than de minimis) of other transfers from the decedent to the decedent's spouse (at the time of the transfer) within 10 years of the date of the decedent's death, plus

(iii) the amount of other gifts (not included under clause (i) or (ii)) from the de-

cedent within 3 years of such date, other than gifts to members of the decedent's family otherwise excluded under section 2503(b), over

(B) the sum of the amounts described in clauses (i), (ii), and (iii) of subparagraph (A) which are otherwise includible in the gross estate.

For purposes of the preceding sentence, the Secretary may provide that de minimis gifts to persons other than members of the decedent's family shall not be taken into account.

**(d) Adjusted value of the qualified family-owned business interests**

For purposes of this section, the adjusted value of any qualified family-owned business interest is the value of such interest for purposes of this chapter (determined without regard to this section), reduced by the excess of—

(1) any amount deductible under paragraph (3) or (4) of section 2053(a), over

(2) the sum of—

(A) any indebtedness on any qualified residence of the decedent the interest on which is deductible under section 163(h)(3), plus

(B) any indebtedness to the extent the taxpayer establishes that the proceeds of such indebtedness were used for the payment of educational and medical expenses of the decedent, the decedent's spouse, or the decedent's dependents (within the meaning of section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), plus

(C) any indebtedness not described in subparagraph (A) or (B), to the extent such indebtedness does not exceed \$10,000.

**(e) Qualified family-owned business interest**

**(1) In general**

For purposes of this section, the term “qualified family-owned business interest” means—

(A) an interest as a proprietor in a trade or business carried on as a proprietorship, or

(B) an interest in an entity carrying on a trade or business, if—

(i) at least—

(I) 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family,

(II) 70 percent of such entity is so owned by members of 2 families, or

(III) 90 percent of such entity is so owned by members of 3 families, and

(ii) for purposes of subclause (II) or (III) of clause (i), at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

For purposes of the preceding sentence, a decedent shall be treated as engaged in a trade or business if any member of the decedent's family is engaged in such trade or business.

**(2) Limitation**

Such term shall not include—

(A) any interest in a trade or business the principal place of business of which is not located in the United States,

(B) any interest in an entity, if the stock or debt of such entity or a controlled group (as defined in section 267(f)(1)) of which such entity was a member was readily tradable on an established securities market or secondary market (as defined by the Secretary) at any time within 3 years of the date of the decedent's death,

(C) any interest in a trade or business not described in section 542(c)(2), if more than 35 percent of the adjusted ordinary gross income of such trade or business for the taxable year which includes the date of the decedent's death would qualify as personal holding company income (as defined in section 543(a) without regard to paragraph (2)(B) thereof) if such trade or business were a corporation,

(D) that portion of an interest in a trade or business that is attributable to—

(i) cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business, and

(ii) any other assets of the trade or business (other than assets used in the active conduct of a trade or business described in section 542(c)(2)), which produce, or are held for the production of, personal holding company income (as defined in subparagraph (C)) or income described in section 954(c)(1) (determined without regard to subparagraph (A) thereof and by substituting “trade or business” for “controlled foreign corporation”).

In the case of a lease of property on a net cash basis by the decedent to a member of the decedent's family, income from such lease shall not be treated as personal holding company income for purposes of subparagraph (C), and such property shall not be treated as an asset described in subparagraph (D)(ii), if such income and property would not be so treated if the lessor had engaged directly in the activities engaged in by the lessee with respect to such property.

**(3) Rules regarding ownership**

**(A) Ownership of entities**

For purposes of paragraph (1)(B)—

**(i) Corporations**

Ownership of a corporation shall be determined by the holding of stock possessing the appropriate percentage of the total combined voting power of all classes of stock entitled to vote and the appropriate percentage of the total value of shares of all classes of stock.

**(ii) Partnerships**

Ownership of a partnership shall be determined by the owning of the appropriate percentage of the capital interest in such partnership.

**(B) Ownership of tiered entities**

For purposes of this section, if by reason of holding an interest in a trade or business, a decedent, any member of the decedent's family, any qualified heir, or any member of any qualified heir's family is treated as holding an interest in any other trade or business—

(i) such ownership interest in the other trade or business shall be disregarded in determining if the ownership interest in the first trade or business is a qualified family-owned business interest, and

(ii) this section shall be applied separately in determining if such interest in any other trade or business is a qualified family-owned business interest.

**(C) Individual ownership rules**

For purposes of this section, an interest owned, directly or indirectly, by or for an entity described in paragraph (1)(B) shall be considered as being owned proportionately by or for the entity's shareholders, partners, or beneficiaries. A person shall be treated as a beneficiary of any trust only if such person has a present interest in such trust.

**(f) Tax treatment of failure to materially participate in business or dispositions of interests**

**(1) In general**

There is imposed an additional estate tax if, within 10 years after the date of the decedent's death and before the date of the qualified heir's death—

(A) the material participation requirements described in section 2032A(c)(6)(B) are not met with respect to the qualified family-owned business interest which was acquired (or passed) from the decedent,

(B) the qualified heir disposes of any portion of a qualified family-owned business interest (other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under section 170(h)),

(C) the qualified heir loses United States citizenship (within the meaning of section 877) or with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) occurs, and such heir does not comply with the requirements of subsection (g), or

(D) the principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

**(2) Additional estate tax**

**(A) In general**

The amount of the additional estate tax imposed by paragraph (1) shall be equal to—

(i) the applicable percentage of the adjusted tax difference attributable to the qualified family-owned business interest, plus

(ii) interest on the amount determined under clause (i) at the underpayment rate established under section 6621 for the period beginning on the date the estate tax liability was due under this chapter and ending on the date such additional estate tax is due.

**(B) Applicable percentage**

For purposes of this paragraph, the applicable percentage shall be determined under the following table:

**If the event described in**

**paragraph (1) occurs in the following year of material participation:**

	<b>The applicable percentage is:</b>
1 through 6 .....	100
7 .....	80
8 .....	60
9 .....	40
10 .....	20.

**(C) Adjusted tax difference**

For purposes of subparagraph (A)—

**(i) In general**

The adjusted tax difference attributable to a qualified family-owned business interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under clause (ii)) as the value of such interest bears to the value of all qualified family-owned business interests described in subsection (b)(2).

**(ii) Adjusted tax difference with respect to the estate**

For purposes of clause (i), the term “adjusted tax difference with respect to the estate” means the excess of what would have been the estate tax liability but for the election under this section over the estate tax liability. For purposes of this clause, the term “estate tax liability” means the tax imposed by section 2001 reduced by the credits allowable against such tax.

**(3) Use in trade or business by family members**

A qualified heir shall not be treated as disposing of an interest described in subsection (e)(1)(A) by reason of ceasing to be engaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of such individual's family.

**(g) Security requirements for noncitizen qualified heirs**

**(1) In general**

Except upon the application of subparagraph (F) of subsection (i)(3), if a qualified heir is not a citizen of the United States, any interest under this section passing to or acquired by such heir (including any interest held by such heir at a time described in subsection (f)(1)(C)) shall be treated as a qualified family-owned business interest only if the interest passes or is acquired (or is held) in a qualified trust.

**(2) Qualified trust**

The term “qualified trust” means a trust—

(A) which is organized under, and governed by, the laws of the United States or a State, and

(B) except as otherwise provided in regulations, with respect to which the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation.

**(h) Agreement**

The agreement referred to in this subsection is a written agreement signed by each person in being who has an interest (whether or not in



possession) in any property designated in such agreement consenting to the application of subsection (f) with respect to such property.

**(i) Other definitions and applicable rules**

For purposes of this section—

**(1) Qualified heir**

The term “qualified heir”—

(A) has the meaning given to such term by section 2032A(e)(1), and

(B) includes any active employee of the trade or business to which the qualified family-owned business interest relates if such employee has been employed by such trade or business for a period of at least 10 years before the date of the decedent’s death.

**(2) Member of the family**

The term “member of the family” has the meaning given to such term by section 2032A(e)(2).

**(3) Applicable rules**

Rules similar to the following rules shall apply:

(A) Section 2032A(b)(4) (relating to decedents who are retired or disabled).

(B) Section 2032A(b)(5) (relating to special rules for surviving spouses).

(C) Section 2032A(c)(2)(D) (relating to partial dispositions).

(D) Section 2032A(c)(3) (relating to only 1 additional tax imposed with respect to any 1 portion).

(E) Section 2032A(c)(4) (relating to due date).

(F) Section 2032A(c)(5) (relating to liability for tax; furnishing of bond).

(G) Section 2032A(c)(7) (relating to no tax if use begins within 2 years; active management by eligible qualified heir treated as material participation).

(H) Paragraphs (1) and (3) of section 2032A(d) (relating to election; agreement).

(I) Section 2032A(e)(10) (relating to community property).

(J) Section 2032A(e)(14) (relating to treatment of replacement property acquired in section 1031 or 1033 transactions).

(K) Section 2032A(f) (relating to statute of limitations).

(L) Section 2032A(g) (relating to application to interests in partnerships, corporations, and trusts).

(M) Subsections (h) and (i) of section 2032A.

(N) Section 6166(b)(3) (relating to farmhouses and certain other structures taken into account).

(O) Subparagraphs (B), (C), and (D) of section 6166(g)(1) (relating to acceleration of payment).

(P) Section 6324B (relating to special lien for additional estate tax).

**(j) Termination**

This section shall not apply to the estates of decedents dying after December 31, 2003.

(Added Pub. L. 105-34, title V, § 502(a), Aug. 5, 1997, 111 Stat. 847, § 2033A; renumbered § 2057 and amended Pub. L. 105-206, title VI,

§ 6007(b)(1)(A)–(D), (2)–(7), July 22, 1998, 112 Stat. 807–809; Pub. L. 107-16, title V, § 521(d), June 7, 2001, 115 Stat. 72; Pub. L. 108-311, title II, § 207(23), Oct. 4, 2004, 118 Stat. 1178.)

**AMENDMENT OF SECTION**

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

**PRIOR PROVISIONS**

A prior section 2057, added Pub. L. 99-514, title XI, § 1172(a), Oct. 22, 1986, 100 Stat. 2513; amended Pub. L. 100-203, title X, §§ 10411(a), 10412(a), Dec. 22, 1987, 101 Stat. 1330-432, 1330-433; Pub. L. 100-647, title I, § 1011B(g)(3), Nov. 10, 1988, 102 Stat. 3490, related to sales of employer securities to employee stock ownership plans or worker-owned cooperatives, prior to repeal by Pub. L. 101-239, title VII, § 7304(a)(1), (3), Dec. 19, 1989, 103 Stat. 2352, 2353, applicable to estates of decedents dying after Dec. 19, 1989.

Another prior section 2057, added Pub. L. 94-455, title XX, § 2007(a), Oct. 4, 1976, 90 Stat. 1890; amended Pub. L. 95-600, title VII, § 702(l)(1), (2), Nov. 6, 1978, 92 Stat. 2934, 2935, related to bequests, etc., to certain minor children, prior to repeal by Pub. L. 97-34, title IV, § 427(a), (c), Aug. 13, 1981, 95 Stat. 3181, applicable to estates of decedents dying after Dec. 31, 1981.

**AMENDMENTS**

2004—Subsec. (d)(2)(B). Pub. L. 108-311 inserted “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

2001—Subsec. (j). Pub. L. 107-16, § 521(d), 901, temporarily added subsec. (j). See Effective and Termination Dates of 2001 Amendment note below.

1998—Pub. L. 105-206, § 6007(b)(1)(A), (B), renumbered section 2033A of this title as this section and substituted “interests” for “exclusion” in section catchline.

Subsec. (a). Pub. L. 105-206, § 6007(b)(1)(B), substituted “General rule” for “In general” in heading and amended text generally. Prior to amendment, text read as follows: “In the case of an estate of a decedent to which this section applies, the value of the gross estate shall not include the lesser of—

“(1) the adjusted value of the qualified family-owned business interests of the decedent otherwise includible in the estate, or

“(2) the excess of \$1,300,000 over the applicable exclusion amount under section 2010(c) with respect to such estate.”

Subsec. (b)(2)(A). Pub. L. 105-206, § 6007(b)(1)(C), struck out “(without regard to this section)” after “gross estate”.

Subsec. (b)(3). Pub. L. 105-206, § 6007(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The amount of the gifts of qualified family-owned business interests determined under this paragraph is the excess of—

“(A) the sum of—

“(i) the amount of such gifts from the decedent to members of the decedent’s family taken into account under subsection 2001(b)(1)(B), plus

“(ii) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent’s spouse) between the date of the gift and the date of the decedent’s death, over

“(B) the amount of such gifts from the decedent to members of the decedent’s family otherwise included in the gross estate.”

Subsec. (c). Pub. L. 105-206, § 6007(b)(1)(D), struck out “(determined without regard to this section)” after “the gross estate” in introductory provisions.

Subsec. (e)(1). Pub. L. 105-206, § 6007(b)(5)(A), inserted concluding provisions.

Subsec. (e)(2). Pub. L. 105-206, § 6007(b)(3)(C), inserted concluding provisions.

Subsec. (e)(2)(C). Pub. L. 105-206, § 6007(b)(3)(A), substituted “(as defined in section 543(a) without regard to paragraph (2)(B) thereof if such trade or business were a corporation” for “(as defined in section 543(a))”.

Subsec. (e)(2)(D)(ii). Pub. L. 105-206, § 6007(b)(3)(B), substituted “personal holding company income (as defined in subparagraph (C)) or income described” for “income of which is described in section 543(a) or”.

Subsec. (f)(2)(A)(i). Pub. L. 105-206, § 6007(b)(4)(A), struck out “(as determined under rules similar to the rules of section 2032A(c)(2)(B))” after “business interest”.

Subsec. (f)(2)(C). Pub. L. 105-206, § 6007(b)(4)(B), added subpar. (C).

Subsec. (f)(3). Pub. L. 105-206, § 6007(b)(5)(B), added par. (3).

Subsec. (g)(1). Pub. L. 105-206, § 6007(b)(6), struck out “or (M)” after “subparagraph (F)”.

Subsec. (i)(3)(L) to (P). Pub. L. 105-206, § 6007(b)(7), added subpars. (L) and (M) and redesignated former subpars. (L) to (N) as (N) to (P), respectively.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108-311, set out as a note under section 2 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2003, see section 521(e)(3) of Pub. L. 107-16, set out as a note under section 2010 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section 502(c) of Pub. L. 105-34 provided that: “The amendments made by this section [enacting this section] shall apply to estates of decedents dying after December 31, 1997.”

### § 2058. State death taxes

#### (a) Allowance of deduction

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

#### (b) Period of limitations

The deduction allowed by this section shall include only such taxes as were actually paid and deduction therefor claimed before the later of—

(1) 4 years after the filing of the return required by section 6018, or

(2) if—

(A) a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), the expiration of 60 days after the decision of the Tax Court becomes final,

(B) an extension of time has been granted under section 6161 or 6166 for payment of the tax shown on the return, or of a deficiency, the date of the expiration of the period of the extension, or

(C) a claim for refund or credit of an overpayment of tax imposed by this chapter has been filed within the time prescribed in section 6511, the latest of the expiration of—

(i) 60 days from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of any part of such claim,

(ii) 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon such claim, or

(iii) 2 years after a notice of the waiver of disallowance is filed under section 6532(a)(3).

Notwithstanding sections 6511 and 6512, refund based on the deduction may be made if the claim for refund is filed within the period provided in the preceding sentence. Any such refund shall be made without interest.

(Added Pub. L. 107-16, title V, § 532(b), June 7, 2001, 115 Stat. 73.)

#### TERMINATION OF SECTION

*For termination of section by section 901 of Pub. L. 107-16, see Effective and Termination Dates note below.*

#### EFFECTIVE AND TERMINATION DATES

Section applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 2011 of this title.

Section inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if it had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

### Subchapter B—Estates of Nonresidents Not Citizens

Sec.	
2101.	Tax imposed.
2102.	Credits against tax.
2103.	Definition of gross estate.
2104.	Property within the United States.
2105.	Property without the United States.
2106.	Taxable estate.
2107.	Expatriation to avoid tax.
2108.	Application of pre-1967 estate tax provisions.

#### AMENDMENTS

1966—Pub. L. 89-809, title I, § 108(h), Nov. 13, 1966, 80 Stat. 1574, added items 2107 and 2108.

### § 2101. Tax imposed

#### (a) Imposition

Except as provided in section 2107, a tax is hereby imposed on the transfer of the taxable

estate (determined as provided in section 2106) of every decedent nonresident not a citizen of the United States.

**(b) Computation of tax**

The tax imposed by this section shall be the amount equal to the excess (if any) of—

(1) a tentative tax computed under section 2001(c) on the sum of—

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) a tentative tax computed under section 2001(c) on the amount of the adjusted taxable gifts.

**(c) Adjustments for taxable gifts**

**(1) Adjusted taxable gifts defined**

For purposes of this section, the term “adjusted taxable gifts” means the total amount of the taxable gifts (within the meaning of section 2503 as modified by section 2511) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

**(2) Adjustment for certain gift tax**

For purposes of this section, the rules of section 2001(d) shall apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89-809, title I, §108(a), Nov. 13, 1966, 80 Stat. 1571; Pub. L. 94-455, title XX, §2001(c)(1)(D), Oct. 4, 1976, 90 Stat. 1850; Pub. L. 100-647, title V, §5032(a), (c), Nov. 10, 1988, 102 Stat. 3669; Pub. L. 101-239, title VII, §7815(c), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 103-66, title XIII, §13208(b)(3), Aug. 10, 1993, 107 Stat. 469; Pub. L. 107-147, title IV, §411(g)(2), Mar. 9, 2002, 116 Stat. 46.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-147 struck out concluding provisions which read as follows: “For purposes of the preceding sentence, there shall be appropriate adjustments in the application of section 2001(c)(2) to reflect the difference between the amount of the credit provided under section 2102(c) and the amount of the credit provided under section 2010.”

1993—Subsec. (b). Pub. L. 103-66 substituted “section 2001(c)(2)” for “section 2001(c)(3)” in last sentence.

1989—Subsec. (b). Pub. L. 101-239 inserted at end “For purposes of the preceding sentence, there shall be appropriate adjustments in the application of section 2001(c)(3) to reflect the difference between the amount of the credit provided under section 2102(c) and the amount of the credit provided under section 2010.”

1988—Subsec. (b). Pub. L. 100-647, §5032(a), substituted “a tentative tax computed under section 2001(c)” for “a tentative tax computed in accordance with the rate schedule set forth in subsection (d)” in pars. (1) and (2).

Subsec. (d). Pub. L. 100-647, §5032(c), struck out subsec. (d) which provided a rate schedule.

1976—Pub. L. 94-455 redesignated existing provisions as (a) to (d), inserted provisions for adjustments for taxable gifts, revised the tax rate schedule, and struck out provisions relating to property held by Alien Property Custodian.

1966—Subsec. (a). Pub. L. 89-809 substituted table to be used in computing the tax imposed on transfer of taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States for provisions sending taxpayer to table in section 2001 for computation of tax imposed.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Re-

lief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable in the case of decedents dying and gifts made after Dec. 31, 1992, see section 13208(c) of Pub. L. 103-66, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 5032(d) of Pub. L. 100-647 provided that: “The amendments made by this section [amending this section and section 2102 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Nov. 10, 1988].”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 108(i) of Pub. L. 89-809 provided that: “The amendments made by this section [amending this section and sections 2102, 2104, 2105, 2106, and 6018 of this title and enacting sections 2107 and 2108 of this title] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Nov. 13, 1966].”

**§ 2102. Credits against tax**

**(a) In general**

The tax imposed by section 2101 shall be credited with the amounts determined in accordance with sections 2012 and 2013 (relating to gift tax and tax on prior transfers).

**(b) Unified credit**

**(1) In general**

A credit of \$13,000 shall be allowed against the tax imposed by section 2101.

**(2) Residents of possessions of the United States**

In the case of a decedent who is considered to be a “nonresident not a citizen of the United States” under section 2209, the credit under this subsection shall be the greater of—

(A) \$13,000, or

(B) that proportion of \$46,800 which the value of that part of the decedent’s gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated.

**(3) Special rules**

**(A) Coordination with treaties**

To the extent required under any treaty obligation of the United States, the credit allowed under this subsection shall be equal to the amount which bears the same ratio to the applicable credit amount in effect under section 2010(c) for the calendar year which includes the date of death as the value of the

part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated. For purposes of the preceding sentence, property shall not be treated as situated in the United States if such property is exempt from the tax imposed by this subchapter under any treaty obligation of the United States.

**(B) Coordination with gift tax unified credit**

If a credit has been allowed under section 2505 with respect to any gift made by the decedent, each dollar amount contained in paragraph (1) or (2) or subparagraph (A) of this paragraph (whichever applies) shall be reduced by the amount so allowed.

**(4) Limitation based on amount of tax**

The credit allowed under this subsection shall not exceed the amount of the tax imposed by section 2101.

**(5) Application of other credits**

For purposes of subsection (a), sections 2012 and 2013 shall be applied as if the credit allowed under this subsection were allowed under section 2010.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89-809, title I, § 108(b), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 94-455, title XX, § 2001(c)(1)(E)(i), Oct. 4, 1976, 90 Stat. 1851; Pub. L. 100-647, title V, § 5032(b), Nov. 10, 1988, 102 Stat. 3669; Pub. L. 104-188, title I, § 1704(f)(1), Aug. 20, 1996, 110 Stat. 1879; Pub. L. 105-34, title V, § 501(a)(1)(E), Aug. 5, 1997, 111 Stat. 845; Pub. L. 107-16, title V, § 532(c)(7), June 7, 2001, 115 Stat. 75.)

**AMENDMENT OF SECTION**

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

**AMENDMENTS**

2001—Subsec. (a). Pub. L. 107-16, §§ 532(c)(7)(A), 901, temporarily reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “The tax imposed by section 2101 shall be credited with the amounts determined in accordance with sections 2011 to 2013, inclusive (relating to State death taxes, gift tax, and tax on prior transfers), subject to the special limitation provided in subsection (b).” See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b). Pub. L. 107-16, §§ 532(c)(7)(B), 901, temporarily redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: “The maximum credit allowed under section 2011 against the tax imposed by section 2101 for State death taxes paid shall be an amount which bears the same ratio to the credit computed as provided in section 2011(b) as the value of the property, as determined for purposes of this chapter, upon which State death taxes were paid and which is included in the gross estate under section 2103 bears to the value of the total gross estate under section 2103. For purposes of this subsection, the term ‘State death taxes’ means the taxes described in section 2011(a).” See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(5). Pub. L. 107-16, §§ 532(c)(7)(C), 901, temporarily substituted “2012 and 2013” for “2011 to 2013, inclusive.” See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c). Pub. L. 107-16, §§ 532(c)(7)(B), 901, temporarily redesignated subsec. (c) as (b). See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (c)(3)(A). Pub. L. 105-34 substituted “the applicable credit amount in effect under section 2010(c) for the calendar year which includes the date of death” for “\$192,800”.

1996—Subsec. (c)(3)(A). Pub. L. 104-188 inserted at end “For purposes of the preceding sentence, property shall not be treated as situated in the United States if such property is exempt from the tax imposed by this subchapter under any treaty obligation of the United States.”

1988—Subsec. (c)(1). Pub. L. 100-647, § 5032(b)(1)(A), substituted “\$13,000” for “\$3,600”.

Subsec. (c)(2). Pub. L. 100-647, § 5032(b)(1), substituted “\$13,000” for “\$3,600” in subpar. (A) and “\$46,800” for “\$15,075” in subpar. (B).

Subsec. (c)(3). Pub. L. 100-647, § 5032(b)(2), amended par. (3) generally, substituting provision relating to special rules for coordination with treaties and with gift tax unified tax credit for provision relating to a phase-in of the par. (2)(B) amount for decedents dying during 1977, 1978, 1979, and 1980.

1976—Subsec. (c). Pub. L. 94-455 added subsec. (c).

1966—Pub. L. 89-809 redesignated existing provisions as subsec. (a), inserted reference to special limitation provided in subsec. (b), and added subsec. (b).

**EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT**

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105-34, set out as a note under section 2001 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 applicable to estates of decedents dying after Nov. 10, 1988, see section 5032(d) of Pub. L. 100-647, set out as a note under section 2101 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

**EFFECTIVE DATE OF 1966 AMENDMENT**

Amendment by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

**§ 2103. Definition of gross estate**

For the purpose of the tax imposed by section 2101, the value of the gross estate of every decedent nonresident not a citizen of the United States shall be that part of his gross estate (determined as provided in section 2031) which at the time of his death is situated in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 397.)

**§ 2104. Property within the United States**

**(a) Stock in corporation**

For purposes of this subchapter shares of stock owned and held by a nonresident not a cit-

izen of the United States shall be deemed property within the United States only if issued by a domestic corporation.

**(b) Revocable transfers and transfers within 3 years of death**

For purposes of this subchapter, any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or at the time of the decedent's death.

**(c) Debt obligations**

For purposes of this subchapter, debt obligations of—

- (1) a United States person, or
- (2) the United States, a State or any political subdivision thereof, or the District of Columbia,

owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States. With respect to estates of decedents dying after December 31, 1969, deposits with a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business, shall, for purposes of this subchapter, be deemed property within the United States. This subsection shall not apply to a debt obligation to which section 2105(b) applies or to a debt obligation of a domestic corporation if any interest on such obligation, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89-809, title I, §108(c), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 91-172, title IV, §435(b), Dec. 30, 1969, 83 Stat. 625; Pub. L. 93-17, §3(a)(1), Apr. 10, 1973, 87 Stat. 12; Pub. L. 93-625, §9(b), Jan. 3, 1975, 88 Stat. 2116; Pub. L. 94-455, title XX, §2001(c)(1)(L), Oct. 4, 1976, 90 Stat. 1853; Pub. L. 100-647, title I, §1012(q)(11), Nov. 10, 1988, 102 Stat. 3525; Pub. L. 104-188, title I, §1704(t)(38), Aug. 20, 1996, 110 Stat. 1889.)

**AMENDMENTS**

1996—Subsec. (c). Pub. L. 104-188 substituted “section 861(a)(1)(A)” for “subparagraph (A), (C), or (D) of section 861(a)(1)” in concluding provisions.

1988—Subsec. (c). Pub. L. 100-647 substituted “subparagraph (A), (C), or (D) of section 861(a)(1)” for “section 861(a)(1)(B), section 861(a)(1)(G), or section 861(a)(1)(H)”.

1976—Subsec. (b). Pub. L. 94-455 substituted “and transfers within 3 years of death” for “and transfers in contemplation of death” after “Revocable transfers”.

1975—Subsec. (c). Pub. L. 93-625 inserted reference to section 861(a)(1)(H) of this title in last sentence.

1973—Subsec. (c). Pub. L. 93-17 made subsec. (c) inapplicable to debt obligations where interest on such obligations is treated as income from sources without the United States by reason of section 861(a)(1)(G) of this title.

1969—Subsec. (c). Pub. L. 91-172 substituted “December 31, 1969” for “December 31, 1972” in provisions deeming deposit with a domestic branch of a foreign corporation if such branch is engaged in the commercial banking business to be property within the United States.

1966—Subsec. (c). Pub. L. 89-809 added subsec. (c).

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-455 not applicable to transfers made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

**EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93-625 applicable with respect to estates of decedents dying after Jan. 3, 1975, see section 9(c) of Pub. L. 93-625, set out as a note under section 861 of this title.

**EFFECTIVE DATE OF 1973 AMENDMENT**

Section 3(a)(2) of Pub. L. 93-17 provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1972, except that in the case of the assumption of a debt obligation of a foreign corporation which is treated as issued under section 4912(c)(2) after December 31, 1972, and before January 1, 1974, the amendment made by paragraph (1) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1973.”

**EFFECTIVE DATE OF 1966 AMENDMENT**

Amendment by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

**SHORT TITLE OF 1973 AMENDMENT**

Section 1(a) of Pub. L. 93-17 provided that: “This Act [enacting sections 4922 and 6689 of this title, amending this section and sections 4911, 4912, 4914, 4915, 4916, 4918, 4919, 4920, and 6611 of this title, and enacting provisions set out as notes under this section] may be cited as the ‘Interest Equalization Tax Extension Act of 1973’.”

**§ 2105. Property without the United States**

**(a) Proceeds of life insurance**

For purposes of this subchapter, the amount receivable as insurance on the life of a nonresident not a citizen of the United States shall not be deemed property within the United States.

**(b) Bank deposits and certain other debt obligations**

For purposes of this subchapter, the following shall not be deemed property within the United States—

(1) amounts described in section 871(i)(3), if any interest thereon would not be subject to tax by reason of section 871(i)(1) were such interest received by the decedent at the time of his death,

(2) deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business,

(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(h)(5) has been received, any interest thereon would be eligible for the exemption from tax under section 871(h)(1) were such interest received by the decedent at the time of his death, and

(4) obligations which would be original issue discount obligations as defined in section 871(g)(1) but for subparagraph (B)(i) thereof, if any interest thereon (were such interest received by the decedent at the time of his death) would not be effectively connected with the conduct of a trade or business within the United States.

Notwithstanding the preceding sentence, if any portion of the interest on an obligation referred to in paragraph (3) would not be eligible for the exemption referred to in paragraph (3) by reason of section 871(h)(4) if the interest were received by the decedent at the time of his death, then an appropriate portion (as determined in a manner prescribed by the Secretary) of the value (as determined for purposes of this chapter) of such debt obligation shall be deemed property within the United States.

**(c) Works of art on loan for exhibition**

For purposes of this subchapter, works of art owned by a nonresident not a citizen of the United States shall not be deemed property within the United States if such works of art are—

- (1) imported into the United States solely for exhibition purposes,
- (2) loaned for such purposes, to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and
- (3) at the time of the death of the owner, on exhibition, or en route to or from exhibition, in such a public gallery or museum.

**(d) Stock in a RIC**

**(1) In general**

For purposes of this subchapter, stock in a regulated investment company (as defined in section 851) owned by a nonresident not a citizen of the United States shall not be deemed property within the United States in the proportion that, at the end of the quarter of such investment company's taxable year immediately preceding a decedent's date of death (or at such other time as the Secretary may designate in regulations), the assets of the investment company that were qualifying assets with respect to the decedent bore to the total assets of the investment company.

**(2) Qualifying assets**

For purposes of this subsection, qualifying assets with respect to a decedent are assets that, if owned directly by the decedent, would have been—

- (A) amounts, deposits, or debt obligations described in subsection (b) of this section,
- (B) debt obligations described in the last sentence of section 2104(c), or
- (C) other property not within the United States.

**(3) Termination**

This subsection shall not apply to estates of decedents dying after December 31, 2007.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89-809, title I, §108(d), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 98-369, div. A, title I, §127(d), July 18, 1984, 98 Stat. 651; Pub. L. 100-647, title I,

§1012(g)(4), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 103-66, title XIII, §13237(b), Aug. 10, 1993, 107 Stat. 508; Pub. L. 105-34, title XIII, §1304(a), Aug. 5, 1997, 111 Stat. 1040; Pub. L. 108-357, title IV, §411(b), Oct. 22, 2004, 118 Stat. 1504.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108-357 added subsec. (d).

1997—Subsec. (b)(4). Pub. L. 105-34 added par. (4).

1993—Subsec. (b). Pub. L. 103-66 substituted “this subchapter, the following shall not be deemed property within the United States” for “this subchapter” in introductory provisions, added par. (3) and concluding provisions, and struck out former par. (3) and concluding provisions which read as follows:

“(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(h)(4) has been received, any interest thereon would be eligible for the exemption from tax under section 871(h)(1) were such interest received by the decedent at the time of his death,

shall not be deemed property within the United States.”

1988—Subsec. (b)(1). Pub. L. 100-647 substituted “section 871(i)(3), if any interest thereon would not be subject to tax by reason of section 871(i)(1)” for “section 861(c), if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States”.

1984—Subsec. (b). Pub. L. 98-369, amended subsec. (b) generally, substituting “Bank deposits and certain other debt obligations” for “Certain bank deposits, etc.” in heading and “, if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States were such interest received by the decedent at the time of his death,” for “if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, and” in par. (1), inserting “and” after “business,” in par. (2), and adding par. (3).

1966—Subsec. (b). Pub. L. 89-809 substituted amounts described in section 861(c) if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, and deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business for moneys deposited with any person carrying on the banking business by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of his death as the property not to be deemed property within the United States for purposes of this subchapter.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to estates of decedents dying after Dec. 31, 2004, see section 411(d)(2) of Pub. L. 108-357, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1304(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to the estates of decedents dying after Dec. 31, 1993, see section 13237(d) of Pub. L. 103-66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which

such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after July 18, 1984, with respect to the estates of decedents dying after such date, see section 127(g)(2) of Pub. L. 98-369, set out as a note under section 871 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

### § 2106. Taxable estate

#### (a) Definition of taxable estate

For purposes of the tax imposed by section 2101, the value of the taxable estate of every decedent nonresident not a citizen of the United States shall be determined by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

##### (1) Expenses, losses, indebtedness, and taxes

That proportion of the deductions specified in sections 2053 and 2054 (other than the deductions described in the following sentence) which the value of such part bears to the value of his entire gross estate, wherever situated. Any deduction allowable under section 2053 in the case of a claim against the estate which was founded on a promise or agreement but was not contracted for an adequate and full consideration in money or money's worth shall be allowable under this paragraph to the extent that it would be allowable as a deduction under paragraph (2) if such promise or agreement constituted a bequest.

##### (2) Transfers for public, charitable, and religious uses

###### (A) In general

The amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)—

(i) to or for the use of the United States, any State, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(ii) to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; or

(iii) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

#### (B) Powers of appointment

Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this paragraph shall, for purposes of this paragraph, be considered a bequest of such decedent.

#### (C) Death taxes payable out of bequests

If the tax imposed by section 2101, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

#### (D) Limitation on deduction

The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

#### (E) Disallowance of deductions in certain cases

The provisions of section 2055(e) shall be applied in the determination of the amount allowable as a deduction under this paragraph.

#### (F) Cross references

(i) For option as to time for valuation for purposes of deduction under this section, see section 2032.

(ii) For exemption of certain bequests for the benefit of the United States and for rules of construction for certain bequests, see section 2055(g).<sup>1</sup>

(iii) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

#### (3) Marital deduction

The amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056.

<sup>1</sup> See References in Text note below.

**(4) State death taxes**

The amount which bears the same ratio to the State death taxes as the value of the property, as determined for purposes of this chapter, upon which State death taxes were paid and which is included in the gross estate under section 2103 bears to the value of the total gross estate under section 2103. For purposes of this paragraph, the term “State death taxes” means the taxes described in section 2011(a).

**(b) Condition of allowance of deductions**

No deduction shall be allowed under paragraphs (1) and (2) of subsection (a) in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 6018 the value at the time of his death of that part of the gross estate of such nonresident not situated in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 398; Pub. L. 85-866, title I, §30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 86-779, §4(c), Sept. 14, 1960, 74 Stat. 1000; Pub. L. 89-809, title I, §108(e), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 91-172, title II, §201(d)(2), (4)(B), Dec. 30, 1969, 83 Stat. 561; Pub. L. 94-455, title XIII, §1307(d)(1)(B)(iii), (C), title XIX, §1902(a)(5), (12)(A), title XX, § 2001(c)(1)(F), Oct. 4, 1976, 90 Stat. 1727, 1805, 1852; Pub. L. 97-473, title II, §202(b)(6), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 99-514, title XIV, §1422(c), Oct. 22, 1986, 100 Stat. 2717; Pub. L. 100-203, title X, §10711(a)(4), Dec. 22, 1987, 101 Stat. 1330-464; Pub. L. 100-647, title V, §5033(c), Nov. 10, 1988, 102 Stat. 3672; Pub. L. 101-239, title VII, §7815(d)(3), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 107-16, title V, §532(c)(8), June 7, 2001, 115 Stat. 75.)

**AMENDMENT OF SECTION**

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

**REFERENCES IN TEXT**

Subsec. (g) of section 2055 of this title, referred to in subsec. (a)(2)(F)(ii), was redesignated (h) by Pub. L. 109-280, title XII, §1218(b), Aug. 17, 2006, 120 Stat. 1081.

**AMENDMENTS**

2001—Subsec. (a)(4). Pub. L. 107-16, §§532(c)(8), 901, temporarily added par. (4). See Effective and Termination Dates of 2001 Amendment note below.

1989—Subsec. (a)(3). Pub. L. 101-239 struck out “allowed where spouse is citizen” after “deduction” in heading.

1988—Subsec. (a)(3). Pub. L. 100-647 added par. (3).

1987—Subsec. (a)(2)(A)(ii), (iii). Pub. L. 100-203 inserted “(or in opposition to)” after “on behalf of”.

1986—Subsec. (a)(2)(F)(ii). Pub. L. 99-514 substituted “section 2055(g)” for “section 2055(f)”.

1983—Subsec. (a)(2)(F). Pub. L. 97-473 substituted “(i)” and “(ii)” for “(1)” and “(2)”, respectively, and added cl. (iii).

1976—Subsec. (a)(2)(A)(i). Pub. L. 94-455, §1902(a)(12)(A), struck out “Territory” after “any State”.

Subsec. (a)(2)(A)(ii). Pub. L. 94-455, §1307(d)(1)(B)(iii), substituted “which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation” for “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation” after “stockholder or individual”.

Subsec. (a)(2)(A)(iii). Pub. L. 94-455, §1307(d)(1)(C), substituted “such trust, fraternal society, order, or as-

sociation would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation” for “no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation” after “children or animals”.

Subsec. (a)(2)(F). Pub. L. 94-455, §1902(a)(5)(A), substituted “Cross references” for “Other cross references” after “(F)”, in cl. (1) “purposes of deduction under this section” for “purpose of deduction under this paragraph” after “valuation for”, in cl. (2) provision for exemption of certain bequests for benefit of United States and for rules of construction for certain bequests, for provisions of cls. (2) to (11) relating to bequests to; Library of Congress, Post Office Department, Office of Naval Records and Library, National Park Service, Department of State, Department of Justice, payment of tax on bequests of United States obligations, Naval Academy, Naval Academy Museum, and National Archives Trust Fund Board, respectively.

Subsec. (a)(3). Pub. L. 94-455, §2001(c)(1)(F), struck out par. (3) relating to specific exemption in case of decedents nonresidents not citizens.

Subsec. (c). Pub. L. 94-455, §1902(a)(5)(B), struck out subsec. (c) relating to treatment of United States bonds in determining gross estate of a decedent who was not engaged in business in the United States at the time of his death.

1969—Subsec. (a)(2)(A)(ii), (iii). Pub. L. 91-172, §201(d)(4)(B), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (a)(2)(E). Pub. L. 91-172, §201(d)(2), substituted substantive provisions for simple reference to sections 503 and 681 of this title in which such substantive provisions were formerly set out.

1966—Subsec. (a)(3). Pub. L. 89-809 substituted “\$30,000” for “\$2,000” as size of exemption in subpar. (A) and “\$30,000” for “\$2,000” as item (i) in formula set out in subpar. (B).

1960—Subsec. (a)(3). Pub. L. 86-779 designated existing provisions as subpar. (A) and added subpar. (B).

1958—Subsec. (a)(2)(E). Pub. L. 85-866 substituted “503” for “504”.

**EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT**

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1989 AMENDMENT**

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 applicable to estates of decedents dying after Nov. 10, 1988, see section 5033(d)(1) of Pub. L. 100-647, set out as a note under section 2056 of this title.

**EFFECTIVE DATE OF 1987 AMENDMENT**

Amendment by Pub. L. 100-203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100-203, set out as a note under section 170 of this title.



## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to transfers and contributions made after Dec. 31, 1986, see section 1422(e) of Pub. L. 99-514, set out as a note under section 2055 of this title.

## EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(3) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(5) of Pub. L. 94-455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2011 of this title.

Amendment by section 2001(c)(1)(F) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

## EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(2) of Pub. L. 91-172 applicable in the case of decedents dying after Dec. 31, 1969, with specified exceptions, see section 201(g)(4) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment by section 201(d)(4)(B) of Pub. L. 91-172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4) of Pub. L. 91-172, set out as a note under section 170 of this title.

## EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

## EFFECTIVE DATE OF 1960 AMENDMENT

Section 4(e)(2) of Pub. L. 86-779 provided that: "The amendments made by subsections (b) and (c) [enacting section 2209 of this title and amending this section] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Sept. 14, 1960]."

## APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100-647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

For provisions directing that in the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of Pub. L. 100-647 shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions, but that in the case of the estate of an individual dying before the date 3 years after Dec. 19, 1989, or a gift by an individual before the date 3 years after Dec. 19, 1989, the requirement of the preceding provision that the individual not be a citizen or resident of the United States shall not apply, see section 7815(d)(14) of Pub. L. 101-239, set out as a note under section 2056 of this title.

**§ 2107. Expatriation to avoid tax****(a) Treatment of expatriates**

A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).

**(b) Gross estate**

For purposes of the tax imposed by subsection (a), the value of the gross estate of every decedent to whom subsection (a) applies shall be determined as provided in section 2103, except that—

(1) if such decedent owned (within the meaning of section 958(a)) at the time of his death 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation, and

(2) if such decedent owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of his death, more than 50 percent of—

(A) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(B) the total value of the stock of such corporation,

then that proportion of the fair market value of the stock of such foreign corporation owned (within the meaning of section 958(a)) by such decedent at the time of his death, which the fair market value of any assets owned by such foreign corporation and situated in the United States, at the time of his death, bears to the total fair market value of all assets owned by such foreign corporation at the time of his death, shall be included in the gross estate of such decedent. For purposes of the preceding sentence, a decedent shall be treated as owning stock of a foreign corporation at the time of his death if, at the time of a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, he owned such stock.

**(c) Credits****(1) Unified credit****(A) In general**

A credit of \$13,000 shall be allowed against the tax imposed by subsection (a).

**(B) Limitation based on amount of tax**

The credit allowed under this paragraph shall not exceed the amount of the tax imposed by subsection (a).

**(2) Credit for foreign death taxes****(A) In general**

The tax imposed by subsection (a) shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property which is included in the gross estate solely by reason of subsection (b).

**(B) Limitation on credit**

The credit allowed by subparagraph (A) for such taxes paid to a foreign country shall not exceed the lesser of—

(i) the amount which bears the same ratio to the amount of such taxes actually paid to such foreign country as the value of the property subjected to such taxes by such foreign country and included in the gross estate solely by reason of subsection (b) bears to the value of all property subjected to such taxes by such foreign country, or

(ii) such property's proportionate share of the excess of—

(I) the tax imposed by subsection (a), over

(II) the tax which would be imposed by section 2101 but for this section.

### (C) Proportionate share

In the case of property which is included in the gross estate solely by reason of subsection (b), such property's proportionate share is the percentage which the value of such property bears to the total value of all property included in the gross estate solely by reason of subsection (b).

### (3) Other credits

The tax imposed by subsection (a) shall be credited with the amounts determined in accordance with subsections (a) and (b) of section 2102. For purposes of subsection (a) of section 2102, sections 2012 and 2013 shall be applied as if the credit allowed under paragraph (1) were allowed under section 2010.

### (d) Burden of proof

If the Secretary establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction in the estate, inheritance, legacy, and succession taxes in respect of the transfer of his estate, the burden of proving that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A shall be on the executor of such individual's estate.

### (e) Cross reference

**For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e).**

(Added Pub. L. 89-809, title I, §108(f), Nov. 13, 1966, 80 Stat. 1573; amended Pub. L. 94-455, title XIX, §§1902(a)(6), 1906(b)(13)(A), title XX, §2001(c)(1)(E)(ii), Oct. 4, 1976, 90 Stat. 1805, 1834, 1851; Pub. L. 104-191, title V, §511(e)(1), (f)(2)(A), Aug. 21, 1996, 110 Stat. 2097, 2099; Pub. L. 105-34, title XVI, §1602(g)(6), Aug. 5, 1997, 111 Stat. 1095; Pub. L. 107-16, title V, §532(c)(7)(C), June 7, 2001, 115 Stat. 75; Pub. L. 108-357, title VIII, §804(a)(3), Oct. 22, 2004, 118 Stat. 1570.)

#### AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-357 reenacted heading without change and amended text of subsec. (a) generally, substituting provisions relating to imposition of tax on the transfer of the taxable estate of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b), for provisions relating to imposition of tax on the transfer of the taxable estate of every decedent nonresident not a citizen of the United States if, within the 10-year period ending with the date of death, such decedent lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes, and provisions describing individuals to be treated as having a principal purpose to avoid taxes.

2001—Subsec. (c)(3). Pub. L. 107-16, §§532(c)(7)(C), 901, temporarily substituted “2012 and 2013” for “2011 to 2013, inclusive.”. See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (c)(2)(B)(i). Pub. L. 105-34, §1602(g)(6)(A), substituted “such foreign country as the value of the property subjected to such taxes by such foreign country and” for “such foreign country in respect of property included in the gross estate as the value of the property”.

Subsec. (c)(2)(C). Pub. L. 105-34, §1602(g)(6)(B), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “For purposes of subparagraph (B), a property's proportionate share is the percentage of the value of the property which is included in the gross estate solely by reason of subsection (b) bears to the total value of the gross estate.”

1996—Subsec. (a). Pub. L. 104-191, §511(e)(1)(A), substituted “Treatment of expatriates” for “Rate of tax” in heading and amended text generally. Prior to amendment, text read as follows: “A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States dying after November 13, 1966, if after March 8, 1965, and within the 10-year period ending with the date of death such decedent lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A.”

Subsec. (b)(2). Pub. L. 104-191, §511(e)(1)(C), substituted “more than 50 percent of—” for “more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation,” and added subpars. (A) and (B).

Subsec. (c)(2), (3). Pub. L. 104-191, §511(e)(1)(B), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 104-191, §511(f)(2)(A), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows:

“(d) EXCEPTION FOR LOSS OF CITIZENSHIP FOR CERTAIN CAUSES.—Subsection (a) shall not apply to the transfer of the estate of a decedent whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487).”

Subsec. (e). Pub. L. 104-191, §511(f)(2)(A), added subsec. (e). Former subsec. (e) redesignated (d).

1976—Subsec. (a). Pub. L. 94-455, §1902(a)(6), substituted “November 13, 1966” for “the date of enactment of this section” after “dying after”.

Subsec. (c). Pub. L. 94-455, §2001(c)(1)(E)(ii), substituted provisions relating to unified credit for “The tax imposed by subsection (a) shall be credited with the amounts determined in accordance with section 2102.”

Subsec. (e). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to individuals who expatriate after June 3, 2004, see section 804(f) of Pub. L. 108-357, set out as a note under section 877 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Health Insurance Portability

and Accountability Act of 1996, Pub. L. 104-191, to which such amendment relates, see section 1602(i) of Pub. L. 105-34, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to individuals losing United States citizenship on or after Feb. 6, 1995, and to long-term residents of the United States with respect to whom an event described in section 877(e)(1)(A) or (B) of this title occurs on or after Feb. 6, 1995, with special rule for certain individuals who performed an act of expatriation specified in section 1481(a)(1)-(4) of Title 8, Aliens and Nationality, before Feb. 6, 1995, see section 511(g) of Pub. L. 104-191, set out as a note under section 877 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(6) of Pub. L. 94-455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2011 of this title.

Amendment by section 2001(c)(1)(E)(ii) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as an Effective Date of 1966 Amendment note under section 2101 of this title.

### § 2108. Application of pre-1967 estate tax provisions

#### (a) Imposition of more burdensome tax by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, considering the tax system of such foreign country, a more burdensome tax is imposed by such foreign country on the transfer of estates of decedents who were citizens of the United States and not residents of such foreign country than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country,

(2) such foreign country, when requested by the United States to do so, has not acted to revise or reduce such tax so that it is no more burdensome than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country, and

(3) it is in the public interest to apply pre-1967 tax provisions in accordance with this section to the transfer of estates of decedents who were residents of such foreign country,

the President shall proclaim that the tax on the transfer of the estate of every decedent who was a resident of such foreign country at the time of his death shall, in the case of decedents dying after the date of such proclamation, be determined under this subchapter without regard to amendments made to sections 2101 (relating to tax imposed), 2102 (relating to credits against tax), 2106 (relating to taxable estate), and 6018 (relating to estate tax returns) on or after November 13, 1966.

#### (b) Alleviation of more burdensome tax

Whenever the President finds that the laws of any foreign country with respect to which the

President has made a proclamation under subsection (a) have been modified so that the tax on the transfer of estates of decedents who were citizens of the United States and not residents of such foreign country is no longer more burdensome than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country, he shall proclaim that the tax on the transfer of the estate of every decedent who was a resident of such foreign country at the time of his death shall, in the case of decedents dying after the date of such proclamation, be determined under this subchapter without regard to subsection (a).

#### (c) Notification of Congress required

No proclamation shall be issued by the President pursuant to this section unless, at least 30 days prior to such proclamation, he has notified the Senate and the House of Representatives of his intention to issue such proclamation.

#### (d) Implementation by regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to implement this section.

(Added Pub. L. 89-809, title I, §108(f), Nov. 13, 1966, 80 Stat. 1573; amended Pub. L. 94-455, title XIX, §§1902(a)(6), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1805, 1834.)

#### AMENDMENTS

1976—Subsec. (a). Pub. L. 94-455, §1902(a)(6), substituted “November 13, 1976” for “the date of enactment of this section” after “on or after”.

Subsec. (d). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(6) of Pub. L. 94-455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2011 of this title.

#### EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as an Effective Date of 1966 Amendment note under section 2101 of this title.

### Subchapter C—Miscellaneous

Sec. 2201.	Combat zone-related deaths of members of the Armed Forces, deaths of astronauts, and deaths of victims of certain terrorist attacks.
[2202.	Repealed.]
2203.	Definition of executor.
2204.	Discharge of fiduciary from personal liability.
2205.	Reimbursement out of estate.
2206.	Liability of life insurance beneficiaries.
2207.	Liability of recipient of property over which decedent had power of appointment.
2207A.	Right of recovery in the case of certain marital deduction property.
2207B.	Right of recovery where decedent retained interest.
2208.	Certain residents of possessions considered citizens of the United States.
2209.	Certain residents of possessions considered nonresidents not citizens of the United States.
2210.	Termination.

#### AMENDMENTS

2003—Pub. L. 108-121, title I, §110(c)(2)(B), Nov. 11, 2003, 117 Stat. 1342, inserted “, deaths of astronauts,” after “Forces” in item 2201.

2002—Pub. L. 107-134, title I, §103(c), Jan. 23, 2002, 115 Stat. 2431, substituted “Combat zone-related deaths of members of the Armed Forces and deaths of victims of certain terrorist attacks.” for “Members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.” in item 2201.

2001—Pub. L. 107-16, title V, §501(c)(1), June 7, 2001, 115 Stat. 69, added item 2210.

1989—Pub. L. 101-239, title VII, §7304(b)(2)(C), Dec. 19, 1989, 103 Stat. 2353, struck out item 2210 “Liability for payment in case of transfer of employer securities to an employee stock ownership plan or a worker-owned cooperative”.

1988—Pub. L. 100-647, title III, §3031(f)(2), Nov. 10, 1988, 102 Stat. 3638, added item 2207B.

1984—Pub. L. 98-369, div. A, title V, §544(b)(2), July 18, 1984, 98 Stat. 894, added item 2210.

1981—Pub. L. 97-34, title IV, §403(d)(4)(B), Aug. 13, 1981, 95 Stat. 305, added item 2207A.

1976—Pub. L. 94-455, title XIX, §1902(b)(1), Oct. 4, 1976, 90 Stat. 1806, struck out item 2202 “Missionaries in foreign service”.

1975—Pub. L. 93-597, §6(b)(3), Jan. 2, 1975, 88 Stat. 1953, substituted “Members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.” for “Members of the Armed Forces dying during an induction period.” in item 2201.

1970—Pub. L. 91-614, title I, §101(d)(3), Dec. 31, 1970, 84 Stat. 1837, substituted “Discharge of fiduciary from personal liability” for “Discharge of executor from personal liability” in item 2204.

1960—Pub. L. 86-779, §4(b)(2), Sept. 14, 1960, 74 Stat. 1000, added item 2209.

1958—Pub. L. 85-866, title I, §102(c)(4), Sept. 2, 1958, 72 Stat. 1675, added item 2208.

**§ 2201. Combat zone-related deaths of members of the Armed Forces, deaths of astronauts, and deaths of victims of certain terrorist attacks**

**(a) In general**

Unless the executor elects not to have this section apply, in applying sections 2001 and 2101 to the estate of a qualified decedent, the rate schedule set forth in subsection (c) shall be deemed to be the rate schedule set forth in section 2001(c).

**(b) Qualified decedent**

For purposes of this section, the term “qualified decedent” means—

(1) any citizen or resident of the United States dying while in active service of the Armed Forces of the United States, if such decedent—

(A) was killed in action while serving in a combat zone, as determined under section 112(c), or

(B) died as a result of wounds, disease, or injury suffered while serving in a combat zone (as determined under section 112(c)), and while in the line of duty, by reason of a hazard to which such decedent was subjected as an incident of such service,

(2) any specified terrorist victim (as defined in section 692(d)(4)), and

(3) any astronaut whose death occurs in the line of duty.

**(c) Rate schedule**

**If the amount with respect to which the tentative tax to be computed is:**

Not over \$150,000 ..... 1 percent of the amount by which such amount exceeds \$100,000.

**The tentative tax is:**

**If the amount with respect to which the tentative tax to be computed is:**

Over \$150,000 but not over \$200,000.  
Over \$200,000 but not over \$300,000.  
Over \$300,000 but not over \$500,000.  
Over \$500,000 but not over \$700,000.  
Over \$700,000 but not over \$900,000.  
Over \$900,000 but not over \$1,100,000.  
Over \$1,100,000 but not over \$1,600,000.  
Over \$1,600,000 but not over \$2,100,000.  
Over \$2,100,000 but not over \$2,600,000.  
Over \$2,600,000 but not over \$3,100,000.  
Over \$3,100,000 but not over \$3,600,000.  
Over \$3,600,000 but not over \$4,100,000.  
Over \$4,100,000 but not over \$5,100,000.  
Over \$5,100,000 but not over \$6,100,000.  
Over \$6,100,000 but not over \$7,100,000.  
Over \$7,100,000 but not over \$8,100,000.  
Over \$8,100,000 but not over \$9,100,000.  
Over \$9,100,000 but not over \$10,100,000.  
Over \$10,100,000 .....

**The tentative tax is:**

\$500 plus 2 percent of the excess over \$150,000.  
\$1,500 plus 3 percent of the excess over \$200,000.  
\$4,500 plus 4 percent of the excess over \$300,000.  
\$12,500 plus 5 percent of the excess over \$500,000.  
\$22,500 plus 6 percent of the excess over \$700,000.  
\$34,500 plus 7 percent of the excess over \$900,000.  
\$48,500 plus 8 percent of the excess over \$1,100,000.  
\$88,500 plus 9 percent of the excess over \$1,600,000.  
\$133,500 plus 10 percent of the excess over \$2,100,000.  
\$183,500 plus 11 percent of the excess over \$2,600,000.  
\$238,500 plus 12 percent of the excess over \$3,100,000.  
\$298,500 plus 13 percent of the excess over \$3,600,000.  
\$363,500 plus 14 percent of the excess over \$4,100,000.  
\$503,500 plus 15 percent of the excess over \$5,100,000.  
\$653,500 plus 16 percent of the excess over \$6,100,000.  
\$813,500 plus 17 percent of the excess over \$7,100,000.  
\$983,500 plus 18 percent of the excess over \$8,100,000.  
\$1,163,500 plus 19 percent of the excess over \$9,100,000.  
\$1,353,500 plus 20 percent of the excess over \$10,100,000.

**(d) Determination of unified credit**

In the case of an estate to which this section applies, subsection (a) shall not apply in determining the credit under section 2010.

(Aug. 16, 1954, ch. 736, 68A Stat. 401; Pub. L. 93-597, §6(b)(1), (2), Jan. 2, 1975, 88 Stat. 1953; Pub. L. 94-455, title XIX, §1902(a)(7)(A), Oct. 4, 1976, 90 Stat. 1805; Pub. L. 107-16, title V, §532(c)(9), June 7, 2001, 115 Stat. 75; Pub. L. 107-134, title I, §103(a), (b)(3), Jan. 23, 2002, 115 Stat. 2430, 2431; Pub. L. 108-121, title I, §110(c)(1), (2)(A), Nov. 11, 2003, 117 Stat. 1342.)

**AMENDMENTS**

2003—Pub. L. 108-121, §110(c)(2)(A), inserted “, deaths of astronauts,” after “Forces” in section catchline.

Subsec. (b)(3). Pub. L. 108-121, §110(c)(1), added par. (3).

2002—Pub. L. 107-134 amended section catchline and text of section generally, substituting present provisions for provisions which had stated that the additional estate tax as defined in former section 2011(d) should not apply to the transfer of the taxable estate of a citizen or resident of the United States dying while in active service as a member of the Armed Forces of the United States, if such decedent was killed in action while serving in a combat zone, as determined under section 112(c), or died as a result of wounds, disease, or injury suffered, while serving in a combat zone (as determined under section 112(c)), and while in line of duty, by reason of a hazard to which he was subjected as an incident of such service.

2001—Pub. L. 107-16, §§532(c)(9)(B), 901, which temporarily added concluding provisions which read as fol-

lows: “For purposes of this section, the additional estate tax is the difference between the tax imposed by section 2001 or 2101 and the amount equal to 125 percent of the maximum credit provided by section 2011(b), as in effect before its repeal by the Economic Growth and Tax Relief Reconciliation Act of 2001.”, was repealed by Pub. L. 107-134, §103(b)(3). See Effective and Termination Dates of 2001 Amendment and Effective Date of 2002 Amendment notes below.

Pub. L. 107-16, §§532(c)(9)(A), 901, which temporarily struck out “as defined in section 2011(d)” after “The additional estate tax” in introductory provisions, was repealed by Pub. L. 107-134, §103(b)(3). See Effective and Termination Dates of 2001 Amendment and Effective Date of 2002 Amendment notes below.

1975—Pub. L. 93-597, as amended by Pub. L. 94-455, §1902(a)(7)(A), struck out “during an induction period (as defined in section 112(c)(5))” after “resident of the United States dying”, and substituted “Members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.” for “Members of the Armed Forces dying during an induction period” in section catchline.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-121, title I, §110(c)(3), Nov. 11, 2003, 117 Stat. 1343, provided that: “The amendments made by this subsection [amending this section] shall apply to estates of decedents dying after December 31, 2002.”

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-134 applicable to estates of decedents dying on or after Sept. 11, 2001, and, in the case of individuals dying as a result of the Apr. 19, 1995, terrorist attack, dying on or after Apr. 19, 1995, with provisions relating to waiver of limitations, see section 103(d) of Pub. L. 107-134, set out as a note under section 2011 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 1902(a)(7)(B) of Pub. L. 94-455 provided that: “The amendment made by subsection (A) [amending section 6(b)(1) of Pub. L. 93-597] is effective July 1, 1973.”

#### EFFECTIVE DATE OF 1975 AMENDMENT

Section 6(c) of Pub. L. 93-597 provided that: “The amendments made by this section [amending this section and section 1034 of this title] shall take effect on July 1, 1973.”

### [§ 2202. Repealed. Pub. L. 94-455, title XIX, § 1902(a)(8), Oct. 4, 1976, 90 Stat. 1805]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 401; June 25, 1959, Pub. L. 86-70, §22(a), 73 Stat. 146; July 12, 1960, Pub. L. 86-624, §18(b), 74 Stat. 416, related to the presumption that missionaries duly commissioned and serving under boards of foreign missions are residents of the State or the District of Columbia wherein they resided at the time of their commission and departure for service.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set

out as an Effective Date of 1976 Amendment note under section 2011 of this title.

### § 2203. Definition of executor

The term “executor” wherever it is used in this title in connection with the estate tax imposed by this chapter means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent.

(Aug. 16, 1954, ch. 736, 68A Stat. 401.)

### § 2204. Discharge of fiduciary from personal liability

#### (a) General rule

If the executor makes written application to the Secretary for determination of the amount of the tax and discharge from personal liability therefor, the Secretary (as soon as possible, and in any event within 9 months after the making of such application, or, if the application is made before the return is filed, then within 9 months after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 6501) shall notify the executor of the amount of the tax. The executor, on payment of the amount of which he is notified (other than any amount the time for payment of which is extended under sections 6161, 6163, or 6166), and on furnishing any bond which may be required for any amount for which the time for payment is extended, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

#### (b) Fiduciary other than the executor

If a fiduciary (not including a fiduciary in respect of the estate of a nonresident decedent) other than the executor makes written application to the Secretary for determination of the amount of any estate tax for which the fiduciary may be personally liable, and for discharge from personal liability therefor, the Secretary upon the discharge of the executor from personal liability under subsection (a), or upon the expiration of 6 months after the making of such application by the fiduciary, if later, shall notify the fiduciary (1) of the amount of such tax for which it has been determined the fiduciary is liable, or (2) that it has been determined that the fiduciary is not liable for any such tax. Such application shall be accompanied by a copy of the instrument, if any, under which such fiduciary is acting, a description of the property held by the fiduciary, and such other information for purposes of carrying out the provisions of this section as the Secretary may require by regulations. On payment of the amount of such tax for which it has been determined the fiduciary is liable (other than any amount the time for payment of which has been extended under section 6161, 6163, or 6166), and on furnishing any bond which may be required for any amount for which the time for payment has been extended, or on receipt by him of notification of a determination that he is not liable for any such tax, the

fiduciary shall be discharged from personal liability for any deficiency in such tax thereafter found to be due and shall be entitled to a receipt or writing evidencing such discharge.

**(c) Special lien under section 6324A**

For purposes of the second sentence of subsection (a) and the last sentence of subsection (b), an agreement which meets the requirements of section 6324A (relating to special lien for estate tax deferred under section 6166) shall be treated as the furnishing of bond with respect to the amount for which the time for payment has been extended under section 6166.

**(d) Good faith reliance on gift tax returns**

If the executor in good faith relies on gift tax returns furnished under section 6103(e)(3) for determining the decedent's adjusted taxable gifts, the executor shall be discharged from personal liability with respect to any deficiency of the tax imposed by this chapter which is attributable to adjusted taxable gifts which—

- (1) are made more than 3 years before the date of the decedent's death, and
- (2) are not shown on such returns.

(Aug. 16, 1954, ch. 736, 68A Stat. 401; Pub. L. 91-614, title I, §101(d)(1), (f), Dec. 31, 1970, 84 Stat. 1836, 1838; Pub. L. 94-455, title XIX, §§1902(a)(9), 1906(b)(13)(A), title XX, §2004(d)(2), (f)(4), (6), Oct. 4, 1976, 90 Stat. 1805, 1834, 1870, 1872; Pub. L. 95-600, title VII, §702(p)(1), Nov. 6, 1978, 92 Stat. 2937; Pub. L. 97-34, title IV, §422(e)(1), (3), Aug. 13, 1981, 95 Stat. 316.)

AMENDMENTS

1981—Subsecs. (a) to (c), Pub. L. 97-34, §422(e)(1), (3), struck out reference to section 6166A in subsecs. (a) and (b), and two such references in subsec. (c).

1978—Subsec. (d), Pub. L. 95-600 added subsec. (d).

1976—Subsec. (a), Pub. L. 94-455, §§1906(b)(13)(A), 2004(f)(6), substituted “6166 or 6166A” for “or 6166” after “6161, 6163” and struck out “or his delegate” in two places after “Secretary”.

Subsec. (b), Pub. L. 94-455, §§1902(a)(9), 1906(b)(13)(A), 2004(f)(4), (6), substituted “6166 or 6166A” for “or 6166” after “6161, 6163”, “has been” for “has not been” after “payment of which”, and struck out “or his delegate” after “Secretary”.

Subsec. (c), Pub. L. 94-455, §2004(d)(2), added subsec. (c).

1970—Pub. L. 91-614, §101(d)(1)(A), substituted “fiduciary” for “executor” in section catchline.

Subsec. (a), Pub. L. 91-614, §§101(d)(1)(B), (C), (f), designated existing provisions as subsec. (a), inserted “General Rule—” immediately preceding first sentence and permitted a discharge of the executor even where an extension of time has been granted under sections 6161, 6163, or 6166 of this title, where a bond, if required, is provided to assure payment of taxes for which the extension was granted, and substituted “9 months” for “1 year” in two places.

Subsec. (b), Pub. L. 91-614, §101(d)(1)(D), added subsec. (b).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97-34, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(p)(2) of Pub. L. 95-600 provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1976.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(9) of Pub. L. 94-455 applicable in the case of estates of decedents dying after Dec. 31, 1970, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2011 of this title.

Amendment by section 2004(d)(4) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94-455, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by section 101(d)(1) of Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as a note under section 2032 of this title.

Section 101(f) of Pub. L. 91-614 provided that the amendment made by that section is effective with respect to the estates of decedents dying after Dec. 31, 1973.

**§ 2205. Reimbursement out of estate**

If the tax or any part thereof is paid by, or collected out of, that part of the estate passing to or in the possession of any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this chapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

(Aug. 16, 1954, ch. 736, 68A Stat. 402.)

**§ 2206. Liability of life insurance beneficiaries**

Unless the decedent directs otherwise in his will, if any part of the gross estate on which tax has been paid consists of proceeds of policies of insurance on the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds of such policies bear to the taxable estate. If there is more than one such beneficiary, the executor shall be entitled to recover from such beneficiaries in the same ratio. In the case of such proceeds receivable by the surviving spouse of the decedent for which a deduction is allowed under section 2056 (relating to marital deduction), this section shall not apply to such proceeds except as to the amount thereof in excess of the aggregate amount of the marital deductions allowed under such section.

(Aug. 16, 1954, ch. 736, 68A Stat. 402; Pub. L. 94-455, title XX, §2001(c)(1)(H), Oct. 4, 1976, 90 Stat. 1852.)

AMENDMENTS

1976—Pub. L. 94-455 substituted “the taxable estate” for “the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2051” after “policies bear to”.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1)

of Pub. L. 94-455, set out as a note under section 2001 of this title.

**§ 2207. Liability of recipient of property over which decedent had power of appointment**

Unless the decedent directs otherwise in his will, if any part of the gross estate on which the tax has been paid consists of the value of property included in the gross estate under section 2041, the executor shall be entitled to recover from the person receiving such property by reason of the exercise, nonexercise, or release of a power of appointment such portion of the total tax paid as the value of such property bears to the taxable estate. If there is more than one such person, the executor shall be entitled to recover from such persons in the same ratio. In the case of such property received by the surviving spouse of the decedent for which a deduction is allowed under section 2056 (relating to marital deduction), this section shall not apply to such property except as to the value thereof reduced by an amount equal to the excess of the aggregate amount of the marital deductions allowed under section 2056 over the amount of proceeds of insurance upon the life of the decedent receivable by the surviving spouse for which proceeds a marital deduction is allowed under such section.

(Aug. 16, 1954, ch. 736, 68A Stat. 402; Pub. L. 94-455, title XX, § 2001(c)(1)(I), Oct. 4, 1976, 90 Stat. 1852.)

**AMENDMENTS**

1976—Pub. L. 94-455 substituted “the taxable estate” for “the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2052, or section 2106(a), as the case may be” after “property bears to”.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

**§ 2207A. Right of recovery in the case of certain marital deduction property**

**(a) Recovery with respect to estate tax**

**(1) In general**

If any part of the gross estate consists of property the value of which is includible in the gross estate by reason of section 2044 (relating to certain property for which marital deduction was previously allowed), the decedent's estate shall be entitled to recover from the person receiving the property the amount by which—

(A) the total tax under this chapter which has been paid, exceeds

(B) the total tax under this chapter which would have been payable if the value of such property had not been included in the gross estate.

**(2) Decedent may otherwise direct**

Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property.

**(b) Recovery with respect to gift tax**

If for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2519, such person shall be entitled to recover from the person receiving the property the amount by which—

(1) the total tax for such year under chapter 12, exceeds

(2) the total tax which would have been payable under such chapter for such year if the value of such property had not been taken into account for purposes of chapter 12.

**(c) More than one recipient of property**

For purposes of this section, if there is more than one person receiving the property, the right of recovery shall be against each such person.

**(d) Taxes and interest**

In the case of penalties and interest attributable to additional taxes described in subsections (a) and (b), rules similar to subsections (a), (b), and (c) shall apply.

(Added Pub. L. 97-34, title IV, § 403(d)(4)(A), Aug. 13, 1981, 95 Stat. 304; amended Pub. L. 105-34, title XIII, § 1302(a), Aug. 5, 1997, 111 Stat. 1039.)

**AMENDMENTS**

1997—Subsec. (a)(2). Pub. L. 105-34 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “Paragraph (1) shall not apply if the decedent otherwise directs by will.”

**EFFECTIVE DATE OF 1997 AMENDMENT**

Section 1302(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and section 2207B of this title] shall apply with respect to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

**EFFECTIVE DATE**

Section applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97-34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

**§ 2207B. Right of recovery where decedent retained interest**

**(a) Estate tax**

**(1) In general**

If any part of the gross estate on which tax has been paid consists of the value of property included in the gross estate by reason of section 2036 (relating to transfers with retained life estate), the decedent's estate shall be entitled to recover from the person receiving the property the amount which bears the same ratio to the total tax under this chapter which has been paid as—

(A) the value of such property, bears to

(B) the taxable estate.

**(2) Decedent may otherwise direct**

Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property.

**(b) More than one recipient**

For purposes of this section, if there is more than 1 person receiving the property, the right of recovery shall be against each such person.

**(c) Penalties and interest**

In the case of penalties and interest attributable to the additional taxes described in subsection (a), rules similar to the rules of subsections (a) and (b) shall apply.

**(d) No right of recovery against charitable remainder trusts**

No person shall be entitled to recover any amount by reason of this section from a trust to which section 664 applies (determined without regard to this section).

(Added Pub. L. 100-647, title III, § 3031(f)(1), Nov. 10, 1988, 102 Stat. 3637; amended Pub. L. 101-508, title XI, § 11601(b)(1), Nov. 5, 1990, 104 Stat. 1388-490; Pub. L. 105-34, title XIII, § 1302(b), Aug. 5, 1997, 111 Stat. 1039.)

## AMENDMENTS

1997—Subsec. (a)(2). Pub. L. 105-34 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “Paragraph (1) shall not apply if the decedent otherwise directs in a provision of his will (or a revocable trust) specifically referring to this section.”

1990—Subsec. (b). Pub. L. 101-508, § 11601(b)(1)(A), redesignated former subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “If for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2036(c)(4), such person shall be entitled to recover from the original transferee (as defined in section 2036(c)(4)(C)(ii)) the amount which bears the same ratio to the total tax for such year under chapter 12 as—

“(1) the value of such property for purposes of chapter 12, bears to

“(2) the total amount of the taxable gifts for such year.”

Subsec. (c). Pub. L. 101-508, § 11601(b)(1), redesignated subsec. (d) as (c) and substituted “subsection (a)” for “subsections (a) and (b)” and “subsections (a) and (b)” for “subsections (a), (b), and (c)”. Former subsec. (c) redesignated (b).

Subsecs. (d), (e). Pub. L. 101-508, § 11601(b)(1)(A), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (d) redesignated (c).

## EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable with respect to estates of decedents dying after Aug. 5, 1997, see section 1302(c) of Pub. L. 105-34, set out as a note under section 2207A of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable in the case of property transferred after Dec. 17, 1987, see section 11601(c) of Pub. L. 101-508, set out as a note under section 2036 of this title.

## EFFECTIVE DATE

Section effective as if included in provisions of Revenue Act of 1987, Pub. L. 100-203, title X, except that if an amount is included in the gross estate of a decedent under section 2036 of this title other than solely by reason of section 2036(c) of this title, section applicable to such amount only with respect to property transferred after Nov. 10, 1988, see section 3031(h)(1), (3) of Pub. L. 100-647, set out as an Effective Date of 1988 Amendment note under section 2036 of this title.

**§ 2208. Certain residents of possessions considered citizens of the United States**

A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a “citizen” of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(Added Pub. L. 85-866, title I, § 102(a), Sept. 2, 1958, 72 Stat. 1674.)

## EFFECTIVE DATE

Section applicable to estates of decedents dying after Sept. 2, 1958, see section 102(d) of Pub. L. 85-866, set out as an Effective Date of 1958 Amendment note under section 2011 of this title.

**§ 2209. Certain residents of possessions considered nonresidents not citizens of the United States**

A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a “nonresident not a citizen of the United States” within the meaning of that term wherever used in this title, but only if such person acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(Added Pub. L. 86-779, § 4(b)(1), Sept. 14, 1960, 74 Stat. 999.)

## EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Sept. 14, 1960, see section 4(e)(2) of Pub. L. 86-779, set out as an Effective Date of 1960 Amendment note under section 2106 of this title.

**§ 2210. Termination****(a) In general**

Except as provided in subsection (b), this chapter shall not apply to the estates of decedents dying after December 31, 2009.

**(b) Certain distributions from qualified domestic trusts**

In applying section 2056A with respect to the surviving spouse of a decedent dying before January 1, 2010—

(1) section 2056A(b)(1)(A) shall not apply to distributions made after December 31, 2020, and

(2) section 2056A(b)(1)(B) shall not apply after December 31, 2009.

(Added Pub. L. 107-16, title V, § 501(a), June 7, 2001, 115 Stat. 69.)

## TERMINATION OF SECTION

*For termination of section by section 901 of Pub. L. 107-16, see Effective and Termination Dates note below.*

## PRIOR PROVISIONS

A prior section 2210, added Pub. L. 98-369, div. A, title V, § 544(a), July 18, 1984, 98 Stat. 892; amended Pub. L.



99-514, title XVIII, §§1854(d)(1)(A), (2)–(6), 1899A(37), Oct. 22, 1986, 100 Stat. 2879, 2880, 2960, related to liability for payment in case of transfer of employer securities to an employee stock ownership plan or a worker-owned cooperative, prior to repeal by Pub. L. 101-239, title VII, §7304(b)(1), (3), Dec. 19, 1989, 103 Stat. 2353, applicable to estates of decedents dying after July 12, 1989.

#### EFFECTIVE AND TERMINATION DATES

Pub. L. 107-16, title V, §501(d), June 7, 2001, 115 Stat. 69, provided that: “The amendments made by this section [enacting this section and section 2664 of this title] shall apply to the estates of decedents dying, and generation-skipping transfers, after December 31, 2009.”

Section inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if it had never been enacted, see section 901 of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

### CHAPTER 12—GIFT TAX

Subchapter		Sec. <sup>1</sup>
A.	Determination of Tax Liability .....	2501
B.	Transfers .....	2511
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#### Subchapter A—Determination of Tax Liability

Sec.	
2501.	Imposition of tax.
2502.	Rate of tax.
2503.	Taxable gifts.
2504.	Taxable gifts for preceding calendar periods.
2505.	Unified credit against gift tax.

#### AMENDMENTS

1981—Pub. L. 97-34, title IV, §442(a)(4)(E), Aug. 13, 1981, 95 Stat. 321, substituted “preceding calendar periods” for “preceding years and quarters” in item 2504.

1976—Pub. L. 94-455, title XX, §2001(c)(2)(B)(i), Oct. 4, 1976, 90 Stat. 1853, added item 2505.

1970—Pub. L. 91-614, title I, §102(a)(4)(B), Dec. 31, 1970, 84 Stat. 1840, substituted “Taxable gifts for preceding years and quarters” for “Taxable gifts for preceding years” in item 2504.

#### § 2501. Imposition of tax

##### (a) Taxable transfers

###### (1) General rule

A tax, computed as provided in section 2502, is hereby imposed for each calendar year on the transfer of property by gift during such calendar year by any individual resident or nonresident.

###### (2) Transfers of intangible property

Except as provided in paragraph (3), paragraph (1) shall not apply to the transfer of intangible property by a nonresident not a citizen of the United States.

###### (3) Exception

###### (A) Certain individuals

Paragraph (2) shall not apply in the case of a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer.

###### (B) Credit for foreign gift taxes

The tax imposed by this section solely by reason of this paragraph shall be credited

with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph.

##### (4) Transfers to political organizations

Paragraph (1) shall not apply to the transfer of money or other property to a political organization (within the meaning of section 527(e)(1)) for the use of such organization.

##### (5) Transfers of certain stock

###### (A) In general

In the case of a transfer of stock in a foreign corporation described in subparagraph (B) by a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer—

(i) section 2511(a) shall be applied without regard to whether such stock is situated within the United States, and

(ii) the value of such stock for purposes of this chapter shall be its U.S.-asset value determined under subparagraph (C).

###### (B) Foreign corporation described

A foreign corporation is described in this subparagraph with respect to a donor if—

(i) the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation, and

(ii) such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(II) the total value of the stock of such corporation.

###### (C) U.S.-asset value

For purposes of subparagraph (A), the U.S.-asset value of stock shall be the amount which bears the same ratio to the fair market value of such stock at the time of transfer as—

(i) the fair market value (at such time) of the assets owned by such foreign corporation and situated in the United States, bears to

(ii) the total fair market value (at such time) of all assets owned by such foreign corporation.

##### (b) Certain residents of possessions considered citizens of the United States

A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a “citizen” of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

<sup>1</sup> Section numbers editorially supplied.

**(c) Certain residents of possessions considered nonresidents not citizens of the United States**

A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a “nonresident not a citizen of the United States” within the meaning of that term wherever used in this title, but only if such donor acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

**(d) Cross references**

**(1) For increase in basis of property acquired by gift for gift tax paid, see section 1015(d).**

**(2) For exclusion of transfers of property outside the United States by a nonresident who is not a citizen of the United States, see section 2511(a).**

(Aug. 16, 1954, ch. 736, 68A Stat. 403; Pub. L. 85-866, title I, §§43(b), 102(b), Sept. 2, 1958, 72 Stat. 1641, 1674; Pub. L. 86-779, §4(d), Sept. 14, 1960, 74 Stat. 1000; Pub. L. 89-809, title I, §109(a), Nov. 13, 1966, 80 Stat. 1574; Pub. L. 91-614, title I, §102(a)(1), Dec. 31, 1970, 84 Stat. 1838; Pub. L. 93-625, §14(a), Jan. 3, 1975, 88 Stat. 2121; Pub. L. 94-455, title XIX, §§1902(a)(10), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1805, 1834; Pub. L. 97-34, title IV, §442(a)(1), Aug. 13, 1981, 95 Stat. 320; Pub. L. 100-647, title III, §3031(a)(2), Nov. 10, 1988, 102 Stat. 3635; Pub. L. 101-508, title XI, §11601(b)(2), Nov. 5, 1990, 104 Stat. 1388-490; Pub. L. 104-191, title V, §511(e)(2), (f)(2)(B), Aug. 21, 1996, 110 Stat. 2098, 2100; Pub. L. 105-34, title XVI, §1602(g)(5), Aug. 5, 1997, 111 Stat. 1095; Pub. L. 108-357, title VIII, §804(d), Oct. 22, 2004, 118 Stat. 1571.)

**AMENDMENTS**

2004—Subsec. (a)(3) to (5). Pub. L. 108-357 added pars. (3) and (5), redesignated former par. (5) as (4), and struck out former pars. (3) and (4) which related to exception of certain individuals from taxable transfers and burden of proof.

1997—Subsec. (a)(3)(C). Pub. L. 105-34 substituted “donor” for “decedent”.

1996—Subsec. (a)(3). Pub. L. 104-191, §511(e)(2), substituted “Exception” for “Exceptions” in heading and amended text generally. Prior to amendment, text read as follows: “Paragraph (2) shall not apply in the case of a donor who at any time after March 8, 1965, and within the 10-year period ending with the date of transfer lost United States citizenship unless—

“(A) such donor’s loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487), or

“(B) such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A.”

Subsec. (a)(3)(E). Pub. L. 104-191, §511(f)(2)(B), added subpar. (E).

1990—Subsec. (d)(3). Pub. L. 101-508 struck out par. (3) which read as follows: “For treatment of certain transfers related to estate tax valuation freezes as gifts to which this chapter applies, see section 2036(c)(4).”

1988—Subsec. (d)(3). Pub. L. 100-647 added par. (3).

1981—Subsec. (a)(1), (4). Pub. L. 97-34 substituted “calendar year” for “calendar quarter” wherever appearing.

1976—Subsec. (a)(1). Pub. L. 94-455 inserted “for each calendar quarter” after “hereby imposed” and struck out “For the first calendar quarter of calendar year

1971 and each calendar quarter thereafter” after “General rule-”.

Subsec. (a)(4). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1975—Subsec. (a)(5). Pub. L. 93-625 added par. (5).

1970—Subsec. (a)(1). Pub. L. 91-614, §102(a)(1)(A), substituted “For the first calendar quarter of the calendar year 1971 and each calendar quarter thereafter” for “For the calendar year 1955 and each calendar year thereafter” and “during such calendar quarter” for “during such calendar year”.

Subsec. (a)(4). Pub. L. 91-614, §102(a)(1)(B), substituted “calendar quarter” for “calendar year”.

1966—Subsec. (a). Pub. L. 89-809 redesignated existing provisions as par. (1), struck out “, except transfers of intangible property by a nonresident not a citizen of the United States and who was not engaged in business in the United States during such calendar year” after “resident or nonresident”, and added pars. (2) to (4).

1960—Subsec. (a). Pub. L. 86-779, §4(d)(2), struck out “who is” before “not a citizen”.

Subsecs. (c), (d). Pub. L. 86-779, §4(d)(1), added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Subsec. (b). Pub. L. 85-866, §102(b), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85-866, §102(b), redesignated former subsec. (b) as (c) and Pub. L. 85-866, §43(b), made the heading read in the plural, designated existing provisions as par. (2) and added par. (1).

**EFFECTIVE DATE OF 2004 AMENDMENT**

Amendment by Pub. L. 108-357 applicable to individuals who expatriate after June 3, 2004, see section 804(f) of Pub. L. 108-357, set out as a note under section 877 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, to which such amendment relates, see section 1602(i) of Pub. L. 105-34, set out as a note under section 26 of this title.

**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by Pub. L. 104-191 applicable to individuals losing United States citizenship on or after Feb. 6, 1995, and to long-term residents of the United States with respect to whom an event described in section 877(e)(1)(A) or (B) of this title occurs on or after Feb. 6, 1995, with special rule for certain individuals who performed an act of expatriation specified in section 1481(a)(1)-(4) of Title 8, Aliens and Nationality, before Feb. 6, 1995, see section 511(g) of Pub. L. 104-191, set out as a note under section 877 of this title.

**EFFECTIVE DATE OF 1990 AMENDMENT**

Amendment by Pub. L. 101-508 applicable in the case of property transferred after Dec. 17, 1987, see section 11601(c) of Pub. L. 101-508, set out as a note under section 2036 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 applicable in cases where transfer referred to in section 2036(c)(1)(B) of this title is on or after June 21, 1988, see section 3031(h)(2) of Pub. L. 100-647, set out as a note under section 2036 of this title.

**EFFECTIVE DATE OF 1981 AMENDMENT**

Section 442(e) of Pub. L. 97-34 provided that: “The amendments made by this section [amending this section and sections 1015, 2502, 2503, 2504, 2505, 2512, 2513, 2522, 6019, 6075, and 6212 of this title] shall apply with respect to gifts made after December 31, 1981.”

**EFFECTIVE DATE OF 1976 AMENDMENT**

Section 1902(c)(2) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, §703(j)(12), Nov. 6, 1978, 92 Stat.

2942, provided that: “The amendments made by paragraphs (10), (11), and (12)(D) and (E) of subsection (a) [amending this section and sections 2522 and 2523 of this title] shall apply with respect to gifts made after December 31, 1976.”

EFFECTIVE DATE OF 1975 AMENDMENT

Section 14(b) of Pub. L. 93-625 provided that: “The amendment made by subsection (a) [amending this section] shall apply to transfers made after May 7, 1974.”

EFFECTIVE DATE OF 1970 AMENDMENT

Section 102(e) of Pub. L. 91-614 provided that: “The amendments made by this section [amending this section and sections 1015, 2012, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 6019, 6075, 6212, 6214, 6324, 6501, and 6512 of this title and enacting provisions set out as a note under this section] shall apply with respect to gifts made after December 31, 1970.”

EFFECTIVE DATE OF 1966 AMENDMENT

Section 109(c) of Pub. L. 89-809 provided that: “The amendments made by this section [amending this section and section 2511 of this title] shall apply with respect to the calendar year 1967 and all calendar years thereafter.”

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4(e)(3) of Pub. L. 86-779 provided that: “The amendments made by subsection (d) [amending this section] shall apply with respect to gifts made after the date of the enactment of this Act [Sept. 14, 1960].”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to gifts made after September 2, 1958, see section 102(d) of Pub. L. 85-866, set out as a note under section 2011 of this title.

ELECTION TO HAVE AMENDMENTS BY TITLE IV OF THE ECONOMIC RECOVERY TAX ACT OF 1981 NOT APPLY

Pub. L. 97-448, title I, §104(d)(3), Jan. 12, 1983, 96 Stat. 2383, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) In the case of any decedent—

“(i) who dies before August 13, 1984, and

“(ii) who made a gift (before August 13, 1981, and during the 3-year period ending on the date of the decedent's death) on which tax imposed by chapter 12 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] has been paid before April 16, 1982,

such decedent's executor may make an election to have subtitle B of such Code (relating to estate and gift taxes) applied with respect to such decedent without regard to any of the amendments made by title IV of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34, title IV].

“(B) An election under subparagraph (A) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

“(C) An election under subparagraph (A), once made, shall be irrevocable.”

§ 2502. Rate of tax

(a) Computation of tax

The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

(1) a tentative tax, computed under section 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

(2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of the preceding calendar periods.

(b) Preceding calendar period

Whenever used in this title in connection with the gift tax imposed by this chapter, the term “preceding calendar period” means—

(1) calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970,

(2) the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the first calendar quarter of calendar year 1982, and

(3) all calendar years after 1981 and before the calendar year for which the tax is being computed.

For purposes of paragraph (1), the term “calendar year 1932” includes only that portion of such year after June 6, 1932.

(c) Tax to be paid by donor

The tax imposed by section 2501 shall be paid by the donor.

(Aug. 16, 1954, ch. 736, 68A Stat. 403; Pub. L. 91-614, title I, §102(a)(2), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 94-455, title XX, §2001(b)(1), Oct. 4, 1976, 90 Stat. 1849; Pub. L. 97-34, title IV, §442(a)(2), Aug. 13, 1981, 95 Stat. 320; Pub. L. 100-203, title X, §10401(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330-431; Pub. L. 107-16, title V, §511(d), June 7, 2001, 115 Stat. 70.)

AMENDMENT OF SUBSECTION (a)

*Pub. L. 107-16, title V, § 511(d), (f)(3), title IX, § 901, June 7, 2001, 115 Stat. 70, 71, 150, provided that, applicable to gifts made after Dec. 31, 2009, subsection (a) of this section is temporarily amended to read as follows:*

(a) Computation of tax

(1) In general

*The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—*

*(A) a tentative tax, computed under paragraph (2), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over*

*(B) a tentative tax, computed under paragraph (2), on the aggregate sum of the taxable gifts for each of the preceding calendar periods.*

(2) Rate schedule

*If the amount with respect to which the tentative tax to be computed is:*

*The tentative tax is:*

<i>Not over \$10,000 .....</i>	<i>18% of such amount.</i>
<i>Over \$10,000 but not over \$20,000.</i>	<i>\$1,800, plus 20% of the excess over \$10,000.</i>
<i>Over \$20,000 but not over \$40,000.</i>	<i>\$3,800, plus 22% of the excess over \$20,000.</i>
<i>Over \$40,000 but not over \$60,000.</i>	<i>\$8,200, plus 24% of the excess over \$40,000.</i>
<i>Over \$60,000 but not over \$80,000.</i>	<i>\$13,000, plus 26% of the excess over \$60,000.</i>
<i>Over \$80,000 but not over \$100,000.</i>	<i>\$18,200, plus 28% of the excess over \$80,000.</i>
<i>Over \$100,000 but not over \$150,000.</i>	<i>\$23,800, plus 30% of the excess over \$100,000.</i>
<i>Over \$150,000 but not over \$250,000.</i>	<i>\$38,800, plus 32% of the excess over \$150,000.</i>
<i>Over \$250,000 but not over \$500,000.</i>	<i>\$70,800, plus 34% of the excess over \$250,000.</i>
<i>Over \$500,000 .....</i>	<i>\$155,800, plus 35% of the excess over \$500,000.</i>

*See Effective and Termination Dates of 2001 Amendment note below.*

## AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100-203, § 10401(b)(2)(B)(i), substituted “under section 2001(c)” for “in accordance with the rate schedule set forth in section 2001(c)”.

Subsec. (a)(2). Pub. L. 100-203, § 10401(b)(2)(B)(ii), substituted “under such section” for “in accordance with such rate schedule”.

1981—Subsec. (a). Pub. L. 97-34 substituted in introductory text and par. (1) “calendar year” for “calendar quarter” and in pars. (1) and (2) “calendar periods” for “calendar years and calendar quarters”.

Subsec. (b). Pub. L. 97-34 substituted definition of “preceding calendar period” for “calendar quarter”, the latter including only the first calendar quarter of the calendar year 1971 and succeeding calendar quarters (covered in par. (2)), the former incorporating former subsec. (c)(1) definition of “preceding calendar years” as meaning calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970 and “calendar year 1932” as including only the portion of such year after June 6, 1932, and former subsec. (c)(2) definition of “preceding calendar quarters” as meaning the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the calendar quarter for which the tax is being computed.

Subsecs. (c), (d). Pub. L. 97-34 redesignated subsec. (d) as (c). Former subsec. (c), defining “preceding calendar years” and “preceding calendar quarters”, was incorporated in subsec. (b).

1976—Subsec. (a). Pub. L. 94-455 inserted “tentative” after “(1) a” and “(2) a” and substituted in par. (1) “section 2001(c)” for “this subsection” after “set forth in”.

1970—Subsec. (a). Pub. L. 91-614, § 102(a)(2)(A), substituted a computation of tax formula based on the current calendar quarter, preceding calendar quarters, and preceding calendar years for a formula based entirely on the current and preceding calendar years.

Subsec. (b). Pub. L. 91-614, § 102(a)(2)(B), substituted definition of “calendar quarter” for definition of “calendar year”.

Subsec. (c). Pub. L. 91-614, § 102(a)(2)(B), substituted definition of “preceding calendar years and quarters” for definition of “preceding calendar years”.

## EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title V, § 511(f)(3), June 7, 2001, 115 Stat. 71, provided that: “The amendments made by subsections (d) and (e) [amending this section and section 2511 of this title] shall apply to gifts made after December 31, 2009.”

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable in the case of decedents dying, and gifts made, after Dec. 31, 1987, see section 10401(c) of Pub. L. 100-203, set out as a note under section 2001 of this title.

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

## EFFECTIVE DATE OF 1976 AMENDMENT

Section 2001(d)(2) of Pub. L. 94-455 provided that: “The amendments made by subsections (b) and (c)(2) [enacting section 2505 of this title, amending this section and section 2504 of this title, and repealing section

2521 of this title] shall apply to gifts made after December 31, 1976.”

## EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

## § 2503. Taxable gifts

## (a) General definition

The term “taxable gifts” means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (section 2522 and following).

## (b) Exclusions from gifts

## (1) In general

In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year, the first \$10,000 of such gifts to such person shall not, for purposes of subsection (a), be included in the total amount of gifts made during such year. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person.

## (2) Inflation adjustment

In the case of gifts made in a calendar year after 1998, the \$10,000 amount contained in paragraph (1) shall be increased by an amount equal to—

(A) \$10,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting “calendar year 1997” for “calendar year 1992” in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$1,000, such amount shall be rounded to the next lowest multiple of \$1,000.

## (c) Transfer for the benefit of minor

No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom—

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended—

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).

**(d) Repealed. Pub. L. 97-34, title III, §311(h)(5), Aug. 13, 1981, 95 Stat. 282]**

**(e) Exclusion for certain transfers for educational expenses or medical expenses**

**(1) In general**

Any qualified transfer shall not be treated as a transfer of property by gift for purposes of this chapter.

**(2) Qualified transfer**

For purposes of this subsection, the term “qualified transfer” means any amount paid on behalf of an individual—

(A) as tuition to an educational organization described in section 170(b)(1)(A)(ii) for the education or training of such individual, or

(B) to any person who provides medical care (as defined in section 213(d)) with respect to such individual as payment for such medical care.

**(f) Waiver of certain pension rights**

If any individual waives, before the death of a participant, any survivor benefit, or right to such benefit, under section 401(a)(11) or 417, such waiver shall not be treated as a transfer of property by gift for purposes of this chapter.

**(g) Treatment of certain loans of artworks**

**(1) In general**

For purposes of this subtitle, any loan of a qualified work of art shall not be treated as a transfer (and the value of such qualified work of art shall be determined as if such loan had not been made) if—

(A) such loan is to an organization described in section 501(c)(3) and exempt from tax under section 501(c) (other than a private foundation), and

(B) the use of such work by such organization is related to the purpose or function constituting the basis for its exemption under section 501.

**(2) Definitions**

For purposes of this section—

**(A) Qualified work of art**

The term “qualified work of art” means any archaeological, historic, or creative tangible personal property.

**(B) Private foundation**

The term “private foundation” has the meaning given such term by section 509, except that such term shall not include any private operating foundation (as defined in section 4942(j)(3)).

(Aug. 16, 1954, ch. 736, 68A Stat. 404; Pub. L. 91-614, title I, §102(a)(3), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 95-600, title VII, §702(j)(2), Nov. 6, 1978, 92 Stat. 2931; Pub. L. 97-34, title III, §311(h)(5), title IV, §§441(a), (b), 442(a)(3), Aug. 13, 1981, 95 Stat. 282, 319, 320; Pub. L. 99-514, title XVIII, §1898(h)(1)(B), Oct. 22, 1986, 100 Stat. 2957; Pub. L. 100-647, title I, §1018(s)(2)(A), (u)(52), Nov. 10, 1988, 102 Stat. 3586, 3593; Pub. L. 101-239, title VII, §7811(m)(1), Dec. 19, 1989, 103 Stat. 2412; Pub. L. 105-34, title V, §501(c), Aug. 5, 1997, 111 Stat. 846.)

**ADJUSTMENT OF ANNUAL EXCLUSION FOR GIFTS IN CALENDAR YEAR 2007**

*For adjustment of dollar amounts of gifts not includible in total amount of taxable gifts under this section for calendar year 2007, see section 3.32 of Revenue Procedure 2006-53, set out as a note under section 1 of this title.*

**AMENDMENTS**

1997—Subsec. (b). Pub. L. 105-34 designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2).

1989—Subsecs. (f), (g). Pub. L. 101-239 redesignated subsec. (f), relating to treatment of certain loans of artworks, as (g).

1988—Subsec. (e)(2)(B). Pub. L. 100-647, §1018(u)(52), substituted “section 213(d)” for “section 213(e)”.

Subsec. (f). Pub. L. 100-647, §1018(s)(2)(A), added subsec. (f) relating to treatment of certain loans of artworks.

1986—Subsec. (f). Pub. L. 99-514 added subsec. (f).

1981—Subsec. (a). Pub. L. 97-34, §442(a)(3)(A), substituted “the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (section 2522 and following)” for “, in the case of gifts made after December 31, 1970, the total amount of gifts made during calendar quarter, less the deductions provided in subchapter C (sec. 2521 and following)” and struck out provision that in the case of gifts made before Jan. 1, 1971, “taxable gifts” means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C.

Subsec. (b). Pub. L. 97-34, §442(a)(3)(B), substituted provision that in the case of gifts, other than gifts of future interests in property, made to any person by the donor during the calendar year, the first \$10,000 of such gifts to such person shall not, for purposes of subsec. (a), be included in the total amount of gifts made during such year for provision that in computing taxable gifts for the calendar quarter, in the case of gifts, other than gifts of future interests in property, made to any person by the donor during the calendar year 1971 and subsequent calendar years, \$10,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not, for purposes of subsec. (a), be included in the total amount of gifts made during such quarter.

Pub. L. 97-34, §441(a), substituted “\$10,000” for “\$3,000”.

Subsec. (d). Pub. L. 97-34, §311(h)(5), repealed subsec. (d) which related to individual retirement accounts, etc., for spouse.

Subsec. (e). Pub. L. 97-34, §441(b), added subsec. (e).

1978—Subsec. (d). Pub. L. 95-600 added subsec. (d).

1970—Subsec. (a). Pub. L. 91-614, §102(a)(3)(A), divided definition of “taxable gifts” into gifts made after Dec. 31, 1970, where taxable gifts are based on the total amount of gifts made during the calendar quarter, less the applicable deductions, and gifts made before Jan. 1, 1971, where taxable gifts are based on the total amount of gifts made during the calendar year, less the applicable deductions.

Subsec. (b). Pub. L. 91-614, §102(a)(3)(B), substituted provisions with regard to computing taxable gifts for the calendar quarter, in the case of gifts made to any persons by the donor during the calendar year 1971 and subsequent calendar years, \$3,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not be included in the total amount of gifts made during such quarter for provisions requiring in the case of gifts made to any person by the donor during the calendar year 1955 and subsequent calendar years, the first \$3,000 of such gifts to such person shall not be included in the total amount of gifts made during such year.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see

section 501(f) of Pub. L. 105-34, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 1018(s)(2)(B) of Pub. L. 100-647 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to loans after July 31, 1969.”

Amendment by section 1018(u)(52) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98-397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99-514, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(h)(5) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97-34, set out as a note under section 219 of this title.

Section 441(c) of Pub. L. 97-34, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to transfers after December 31, 1981.

“(2) TRANSITIONAL RULE.—If—

“(A) an instrument executed before the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981] provides for a power of appointment which may be exercised during any period after December 31, 1981,

“(B) such power of appointment is expressly defined in terms of, or by reference to, the amount of the gift tax exclusion under section 2503(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (or the corresponding provision of prior law),

“(C) the instrument described in subparagraph (A) has not been amended on or after the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981], and

“(D) the State has not enacted a statute applicable to such gift under which such power of appointment is to be construed as being defined in terms of, or by reference to, the amount of the exclusion under such section 2503(b) after its amendment by subsection (a), then the amendment made by subsection (a) shall not apply to such gift.”

Amendment by section 442(a)(3) of Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(j)(3)(B) of Pub. L. 95-600 provided that: “The amendment made by paragraph (2) [amending this section] shall apply to transfers made after December 31, 1976.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [ §§1101-1147 and 1171-1177] or title XVIII [ §§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### § 2504. Taxable gifts for preceding calendar periods

##### (a) In general

In computing taxable gifts for preceding calendar periods for purposes of computing the tax for any calendar year—

(1) there shall be treated as gifts such transfers as were considered to be gifts under the gift tax laws applicable to the calendar period in which the transfers were made,

(2) there shall be allowed such deductions as were provided for under such laws, and

(3) the specific exemption in the amount (if any) allowable under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) shall be applied in all computations in respect of preceding calendar periods ending before January 1, 1977, for purposes of computing the tax for any calendar year.

##### (b) Exclusions from gifts for preceding calendar periods

In the case of gifts made to any person by the donor during preceding calendar periods, the amount excluded, if any, by the provisions of gift tax laws applicable to the periods in which the gifts were made shall not, for purposes of subsection (a), be included in the total amount of the gifts made during such preceding calendar periods.

##### (c) Valuation of gifts

If the time has expired under section 6501 within which a tax may be assessed under this chapter 12 (or under corresponding provisions of prior laws) on—

(1) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

(2) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined (within the meaning of section 2001(f)(2)) for purposes of this chapter.

##### (d) Net gifts

The term “net gifts” as used in the corresponding provisions of prior laws shall be read as “taxable gifts” for purposes of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 405; Pub. L. 91-614, title I, § 102(a)(4)(A), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 94-455, title XX, § 2001(c)(2)(A), Oct. 4, 1976, 90 Stat. 1853; Pub. L. 97-34, title IV, § 442(a)(4)(A)-(D), Aug. 13, 1981, 95 Stat. 321; Pub. L. 105-34, title V, § 506(d), Aug. 5, 1997, 111 Stat. 856; Pub. L. 105-206, title VI, § 6007(e)(2)(B)(C)], July 22, 1998, 112 Stat. 810.)

#### REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (a)(3), is Pub. L. 94-455, Oct. 4, 1976, 90 Stat. 1520, as

amended. Section 2521 of this title was repealed by section 2001(b)(3) of Pub. L. 94-455. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105-206 substituted “gifts” for “certain gifts for preceding calendar periods” in heading and amended text generally. Prior to amendment, text read as follows: “If the time has expired within which a tax may be assessed under this chapter or under corresponding provisions of prior laws on the transfer of property by gift made during a preceding calendar period, as defined in section 2502(b), the value of such gift made in such preceding calendar period shall, for purposes of computing the tax under this chapter for any calendar year, be the value of such gift which was used in computing the tax for the last preceding calendar period for which a tax under this chapter or under corresponding provisions of prior laws was assessed or paid.”

1997—Subsec. (c). Pub. L. 105-34 struck out “, and if a tax under this chapter or under corresponding provisions of prior laws has been assessed or paid for such preceding calendar period” after “as defined in section 2502(b)”.

1981—Pub. L. 97-34, § 442(a)(4)(D), substituted “calendar periods” for “years and quarters” in section catchline.

Subsec. (a). Pub. L. 97-34, § 442(a)(4)(A), substituted in introductory text “preceding calendar periods” and “calendar year” for “preceding calendar years or calendar quarters” and “calendar quarter”, incorporated existing text in provisions designated pars. (1) to (3), and substituted in par. (1) “calendar period” for “years or calendar quarters” and in par. (3) “preceding calendar periods” and “calendar year” for “calendar years or calendar quarters” and “calendar quarter”.

Subsec. (b). Pub. L. 97-34, § 442(a)(4)(B), substituted in heading “calendar periods” for “years and quarters” and in text “preceding calendar periods” for “preceding calendar years and calendar quarters”, “the periods” for “the years and calendar quarters”, and “such preceding calendar periods” for “such years and calendar quarters”.

Subsec. (c). Pub. L. 97-34, § 442(a)(4)(C), substituted in heading “calendar periods” for “calendar years and quarters” and in text “preceding calendar period” for “preceding calendar year or calendar quarter” in four places, “any calendar year” for “any calendar quarter”, and “section 2502(b)” for “section 2502(c)”.

1976—Subsec. (a). Pub. L. 94-455 inserted “(as in effect before its repeal by the Tax Reform Act of 1976)” after “section 2521” and “ending before January 1, 1977” after “years or calendar quarters” and substituted “of” for “to previous” after “computations in respect”.

1970—Pub. L. 91-614 substituted “Taxable gifts for preceding years and quarters” for “Taxable gifts for preceding years” in section catchline.

Subsec. (a). Pub. L. 91-614 substituted “In computing taxable gifts for the preceding calendar years or calendar quarters for the purpose of computing the tax for any calendar quarter,” for “In computing taxable gifts for the calendar year 1954 and preceding calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter,” provided that the laws applicable in the calendar quarters as well as the years in which the transfers in question were made shall apply, and substituted “previous calendar years or calendar quarters for the purpose of computing the tax for any calendar year or calendar quarter” for “the calendar year 1954 and previous calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter”.

Subsec. (b). Pub. L. 91-614 inserted reference to calendar quarters in heading, substituted “during preceding calendar years and calendar quarters,” for “during the calendar year 1954 and preceding calendar years,” made reference to the amount excluded by gift tax laws applicable to the calendar quarters as well as years in which the gifts were made, and substituted “during

such years and calendar quarters” for “during such year”.

Subsec. (c). Pub. L. 91-614 inserted reference to calendar quarters in heading, inserted “or calendar quarter” after “calendar year” in four places, and substituted “for any calendar quarter,” for “for the calendar year 1955 and subsequent calendar years,”.

Subsec. (d). Pub. L. 91-614 struck out “For years before the calendar year 1955” from explanation of term “net gifts” as used in corresponding provisions of prior laws.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to gifts made after Aug. 5, 1997, see section 506(e)(1) of Pub. L. 105-34, as amended, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

**§ 2505. Unified credit against gift tax**

**(a) General rule**

In the case of a citizen or resident of the United States, there shall be allowed as a credit against the tax imposed by section 2501 for each calendar year an amount equal to—

(1) the applicable credit amount in effect under section 2010(c) for such calendar year (determined as if the applicable exclusion amount were \$1,000,000), reduced by

(2) the sum of the amounts allowable as a credit to the individual under this section for all preceding calendar periods.

**(b) Adjustment to credit for certain gifts made before 1977**

The amount allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the individual after September 8, 1976.

**(c) Limitation based on amount of tax**

The amount of the credit allowed under subsection (a) for any calendar year shall not exceed the amount of the tax imposed by section 2501 for such calendar year.

(Added Pub. L. 94-455, title XX, § 2001(b)(2), Oct. 4, 1976, 90 Stat. 1849; amended Pub. L. 97-34, title IV, §§ 401(b), 442(a)(5), Aug. 13, 1981, 95 Stat. 299, 321; Pub. L. 101-508, title XI, § 11801(a)(40), (c)(19)(B), Nov. 5, 1990, 104 Stat. 1388-521, 1388-528; Pub. L. 105-34, title V, § 501(a)(2), Aug. 5, 1997, 111 Stat. 845; Pub. L. 107-16, title V, § 521(b), June 7, 2001, 115 Stat. 71.)

## AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

*Pub. L. 107-16, title V, § 521(b)(2), (e)(2), title IX, § 901, June 7, 2001, 115 Stat. 71, 72, 150, provided that, applicable to gifts made after Dec. 31, 2009, subsection (a)(1) of this section is temporarily amended to read as follows:*

*“(1) the amount of the tentative tax which would be determined under the rate schedule set forth in section 2502(a)(2) if the amount with respect to which such tentative tax is to be computed were \$1,000,000, reduced by”.*

## REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (b), is Pub. L. 94-455, Oct. 4, 1976, 90 Stat. 1520, as amended. Section 2521 of this title was repealed by section 2001(b)(3) of Pub. L. 94-455. For complete classification of this Act to the Code, see Tables.

## AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107-16, §§ 521(b)(1), 901, temporarily inserted “(determined as if the applicable exclusion amount were \$1,000,000)” after “calendar year”. See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (a)(1). Pub. L. 105-34 substituted “the applicable credit amount in effect under section 2010(c) for such calendar year” for “\$192,800”.

1990—Subsecs. (b) to (d). Pub. L. 101-508 redesignated subsecs. (c) and (d) as subsecs. (b) and (c), respectively, and struck out former subsec. (b) which provided for a phase-in of the unified credit against gift tax.

1981—Subsec. (a). Pub. L. 97-34, § 442(a)(5)(A), substituted in provision preceding par. (1) “year” for “quarter”, and “periods” for “quarters” in par. (2).

Subsec. (a)(1). Pub. L. 97-34, § 401(b)(1), substituted “\$192,800” for “\$47,000”.

Subsec. (b). Pub. L. 97-34, § 401(b)(2), struck out from heading “\$47,000” before “credit”, substituted subsec. (a)(1) substitutions for “\$192,800” of amounts of “\$62,800”, “\$79,300”, “\$96,300”, “\$121,800”, and “\$155,800” in the case of gifts made in 1982, 1983, 1984, 1985, and 1986, respectively, for subsec. (a)(1) substitutions for “\$47,000” of amounts of “\$6,000”, “\$30,000”, “\$34,000”, “\$38,000”, and “\$42,500” in the case of gifts made after Dec. 31, 1976, and before July 1, 1977, after June 30, 1977, and before Jan. 1, 1978; after Dec. 31, 1977, and before Jan. 1, 1979, after Dec. 31, 1978, and before Jan. 1, 1980, and after Dec. 31, 1979, and before Jan. 1, 1981, respectively.

Subsec. (d). Pub. L. 97-34, § 442(a)(5)(B), substituted “year” for “quarter” in two places.

EFFECTIVE AND TERMINATION DATES OF 2001  
AMENDMENT

Amendment by section 521(b)(1) of Pub. L. 107-16 applicable to estates of decedents dying, and gifts made, after Dec. 31, 2001, and amendment by section 521(b)(2) of Pub. L. 107-16 applicable to gifts made after Dec. 31, 2009, see section 521(e)(1), (2) of Pub. L. 107-16, set out as a note under section 2010 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105-34, set out as a note under section 2001 of this title.

## EFFECTIVE DATE OF 1981 AMENDMENT

Section 401(c)(2) of Pub. L. 97-34 provided that: “The amendments made by subsection (b) [amending this section] shall apply to gifts made after such date [Dec. 31, 1981].”

Amendment by section 442(a)(5) of Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

## SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

## Subchapter B—Transfers

Sec.	
2511.	Transfers in general.
2512.	Valuation of gifts.
2513.	Gift by husband or wife to third party.
2514.	Powers of appointment.
2515.	Treatment of generation-skipping transfer tax.
[2515A.]	Repealed.]
2516.	Certain property settlements.
[2517.]	Repealed.]
2518.	Disclaimers.
2519.	Dispositions of certain life estates.

## AMENDMENTS

1986—Pub. L. 99-514, title XIV, § 1432(d)(2), title XVIII, § 1852(e)(2)(B), Oct. 22, 1986, 100 Stat. 2730, 2868, added item 2515 and struck out item 2517 “Certain annuities under qualified plans”.

1981—Pub. L. 97-34, title IV, § 403(c)(3)(C), (d)(3)(B)(ii), Aug. 13, 1981, 95 Stat. 302, 304, as amended Pub. L. 97-448, title I, § 104(a)(3)(B), Jan. 12, 1983, 96 Stat. 2380, struck out items 2515 “Tenancies by the entirety in real property” and 2515A “Tenancies by the entirety in personal property” and added item 2519.

1978—Pub. L. 95-600, title VII, § 702(k)(1)(C), Nov. 6, 1978, 92 Stat. 2932, substituted in item 2515 “Tenancies by the entirety in real property” for “Tenancies by the entirety” and added item 2515A.

1976—Pub. L. 94-455, title XX, § 2009(b)(3)(A), Oct. 4, 1976, 90 Stat. 1894, added item 2518.

1958—Pub. L. 85-866, title I, § 68(b), Sept. 2, 1958, 72 Stat. 1659, added item 2517.

## § 2511. Transfers in general

## (a) Scope

Subject to the limitations contained in this chapter, the tax imposed by section 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

## (b) Intangible property

For purposes of this chapter, in the case of a nonresident not a citizen of the United States who is excepted from the application of section 2501(a)(2)—

- (1) shares of stock issued by a domestic corporation, and
- (2) debt obligations of—
  - (A) a United States person, or



(B) the United States, a State or any political subdivision thereof, or the District of Columbia,

which are owned and held by such nonresident shall be deemed to be property situated within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 89-809, title I, §109(b), Nov. 13, 1966, 80 Stat. 1575; Pub. L. 107-16, title V, §511(e), June 7, 2001, 115 Stat. 71; Pub. L. 107-147, title IV, §411(g)(1), Mar. 9, 2002, 116 Stat. 46.)

#### AMENDMENT OF SECTION

*Pub. L. 107-147, title IV, §411(g)(1), (x), Mar. 9, 2002, 116 Stat. 46, 53, provided that, effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, subsection (c) of this section is amended by striking “taxable gift under section 2503,” and inserting “transfer of property by gift.”*

*Pub. L. 107-16, title V, §511(e), (f)(3), title IX, §901, June 7, 2001, 115 Stat. 71, 150, provided that, applicable to gifts made after Dec. 31, 2009, this section is temporarily amended by adding at the end the following new subsection:*

#### (c) Treatment of certain transfers in trust

*Notwithstanding any other provision of this section and except as provided in regulations, a transfer in trust shall be treated as a taxable gift under section 2503, unless the trust is treated as wholly owned by the donor or the donor’s spouse under subpart E of part I of subchapter J of chapter 1.*

*See Effective and Termination Dates of 2001 Amendment note below.*

#### AMENDMENTS

1966—Subsec. (b). Pub. L. 89-809 inserted reference to nonresidents who are excepted from the application of section 2501(a)(2) and expanded section to include debt obligations of United States persons or the United States, a State or any political subdivision thereof, or the District of Columbia.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to gifts made after Dec. 31, 2009, see section 511(f)(3) of Pub. L. 107-16, set out as a note under section 2502 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to calendar year 1967 and all calendar years thereafter, see section 109(c) of Pub. L. 89-809, set out as a note under section 2501 of this title.

### § 2512. Valuation of gifts

(a) If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(b) Where property is transferred for less than an adequate and full consideration in money or money’s worth, then the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

#### (c) Cross reference

**For individual’s right to be furnished on request a statement regarding any valuation made by the Secretary of a gift by that individual, see section 7517.**

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 91-614, title I, §102(b)(1), Dec. 31, 1970, 84 Stat. 1840; Pub. L. 94-455, title XX, §2008(a)(2)(B), Oct. 4, 1976, 90 Stat. 1891; Pub. L. 97-34, title IV, §442(b)(1), Aug. 13, 1981, 95 Stat. 322.)

#### AMENDMENTS

1981—Subsec. (b). Pub. L. 97-34 substituted “calendar year” for “calendar quarters”.

1976—Subsec. (c). Pub. L. 94-455 added subsec. (c).

1970—Subsec. (b). Pub. L. 91-614 substituted “calendar quarter” for “calendar year”.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

### § 2513. Gift by husband or wife to third party

#### (a) Considered as made one-half by each

##### (1) In general

A gift made by one spouse to any person other than his spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. This paragraph shall not apply with respect to a gift by a spouse of an interest in property if he creates in his spouse a general power of appointment, as defined in section 2514(c), over such interest. For purposes of this section, an individual shall be considered as the spouse of another individual only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar year.

##### (2) Consent of both spouses

Paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

#### (b) Manner and time of signifying consent

##### (1) Manner

A consent under this section shall be signified in such manner as is provided under regulations prescribed by the Secretary.

##### (2) Time

Such consent may be so signified at any time after the close of the calendar year in

which the gift was made, subject to the following limitations—

(A) The consent may not be signified after the 15th day of April following the close of such year, unless before such 15th day no return has been filed for such year by either spouse, in which case the consent may not be signified after a return for such year is filed by either spouse.

(B) The consent may not be signified after a notice of deficiency with respect to the tax for such year has been sent to either spouse in accordance with section 6212(a).

#### (c) Revocation of consent

Revocation of a consent previously signified shall be made in such manner as in provided under regulations prescribed by the Secretary, but the right to revoke a consent previously signified with respect to a calendar year—

(1) shall not exist after the 15th day of April following the close of such year if the consent was signified on or before such 15th day; and

(2) shall not exist if the consent was not signified until after such 15th day.

#### (d) Joint and several liability for tax

If the consent required by subsection (a)(2) is signified with respect to a gift made in any calendar year, the liability with respect to the entire tax imposed by this chapter of each spouse for such year shall be joint and several.

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 91-614, title I, §102(b)(2), Dec. 31, 1970, 84 Stat. 1840; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-34, title IV, §442(b)(2), Aug. 13, 1981, 95 Stat. 322.)

#### AMENDMENTS

1981—Subsec. (a)(1), (2). Pub. L. 97-34, §442(b)(2)(A), substituted “calendar year” for “calendar quarter”.

Subsec. (b)(2). Pub. L. 97-34, §442(b)(2)(B)–(D), in introductory text, substituted “calendar year” for “calendar quarter”, in subpar. (A), substituted “The consent” for “the consent”, “15th day of April following the close of such year” for “15th day of the second month following the close of such calendar quarter”, and “such year” for “such calendar quarter” in two other places, and in subpar. (B) substituted “The consent” and “such year” for “the consent” and “such calendar quarter”.

Subsec. (c). Pub. L. 97-34, §442(b)(2)(E), in provision preceding par. (1) substituted “calendar year” for “calendar quarter” and in par. (1) “15th day of April following the close of such year” for “15th day of the second month following the close of such quarter”.

Subsec. (d). Pub. L. 97-34, §442(b)(2)(F), substituted “any calendar year” and “such year” for “any calendar quarter” and “such calendar quarter”.

1976—Subsecs. (b)(1), (c). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1970—Subsecs. (a), (b)(2). Pub. L. 91-614, §102(b)(2)(A), substituted “calendar quarter” for “calendar year”.

Subsec. (b)(2)(A). Pub. L. 91-614, §102(b)(2)(B), substituted “the 15th day of the second month” for “the 15th day of April” and substituted “such calendar quarter” for “such year”.

Subsec. (b)(2)(B). Pub. L. 91-614, §102(b)(2)(C), substituted “such calendar quarter” for “such year”.

Subsec. (c). Pub. L. 91-614, §102(b)(2)(A), substituted “calendar quarter” for “calendar year”.

Subsec. (c)(1). Pub. L. 91-614, §102(b)(2)(D), substituted “15th day of the second month following the close of such calendar quarter” for “15th day of April following the close of such year”.

Subsec. (d). Pub. L. 91-614, §102(b)(2)(A), (E), substituted “calendar quarter” for “calendar year” and “such calendar quarter” for “such year”.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

### § 2514. Powers of appointment

#### (a) Powers created on or before October 21, 1942

An exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

(1) such partial release occurred before November 1, 1951, or

(2) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than six months after the termination of such legal disability.

#### (b) Powers created after October 21, 1942

The exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power.

#### (c) Definition of general power of appointment

For purposes of this section, the term “general power of appointment” means a power which is exercisable in favor of the individual possessing the power (hereafter in this subsection referred to as the “possessor”), his estate, his creditors, or the creditors of his estate; except that—

(1) A power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

(2) A power of appointment created on or before October 21, 1942, which is exercisable by the possessor only in conjunction with another person shall not be deemed a general power of appointment.

(3) In the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person—

(A) if the power is not exercisable by the possessor except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment;

(B) if the power is not exercisable by the possessor except in conjunction with a per-

son having a substantial interest, in the property subject to the power, which is adverse to exercise of the power in favor of the possessor—such power shall not be deemed a general power of appointment. For the purposes of this subparagraph a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the possessor's power;

(C) if (after the application of subparagraphs (A) and (B)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the possessor) in favor of whom such power is exercisable.

For purposes of subparagraphs (B) and (C), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

**(d) Creation of another power in certain cases**

If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which, under the applicable local law, can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power, such exercise of the first power shall, to the extent of the property subject to the second power, be deemed a transfer of property by the individual possessing such power.

**(e) Lapse of power**

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts:

- (1) \$5,000, or
- (2) 5 percent of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

**(f) Date of creation of power**

For purposes of this section a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

(Aug. 16, 1954, ch. 736, 68A Stat. 407; Pub. L. 94-455, title XX, § 2009(b)(4)(F), Oct. 4, 1976, 90 Stat. 1894.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455 struck out “A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as a note under section 2518 of this title.

**§ 2515. Treatment of generation-skipping transfer tax**

In the case of any taxable gift which is a direct skip (within the meaning of chapter 13), the amount of such gift shall be increased by the amount of any tax imposed on the transferor under chapter 13 with respect to such gift.

(Added Pub. L. 99-514, title XIV, § 1432(d)(1), Oct. 22, 1986, 100 Stat. 2730.)

PRIOR PROVISIONS

A prior section, acts Aug. 16, 1954, ch. 736, 68A Stat. 409; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(b)(3), 84 Stat. 1841; Oct. 4, 1976, Pub. L. 94-455, title XX, § 2002(c)(2), 90 Stat. 1855; Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(k)(1)(B), 92 Stat. 2932, related to tenancies by the entirety in real property, prior to repeal applicable to gifts made after Dec. 31, 1981, by Pub. L. 97-34, title IV, § 403(c)(3)(B), (e)(2), Aug. 13, 1981, 95 Stat. 302, 305.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**[§ 2515A. Repealed. Pub. L. 97-34, title IV, § 403(c)(3)(B), Aug. 13, 1981, 95 Stat. 302]**

Section, added Pub. L. 95-600, title VII, § 702(k)(1)(A), Nov. 6, 1978, 92 Stat. 2932, related to tenancies by the entirety in personal property.

EFFECTIVE DATE OF REPEAL

Repeal applicable to gifts made after Dec. 31, 1981, see section 403(e)(2) of Pub. L. 97-34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

**§ 2516. Certain property settlements**

Where a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement—

- (1) to either spouse in settlement of his or her marital or property rights, or
- (2) to provide a reasonable allowance for the support of issue of the marriage during minority,

shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

(Aug. 16, 1954, ch. 736, 68A Stat. 409; Pub. L. 98-369, div. A, title IV, § 425(b), July 18, 1984, 98 Stat. 804.)

#### AMENDMENTS

1984—Pub. L. 98-369 substituted in introductory text “within the 3-year period beginning on the date 1 year before such agreement is entered into” for “within 2 years thereafter”.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 425(c)(2) of Pub. L. 98-369 provided that: “The amendment made by subsection (b) [amending this section] shall apply to transfers after the date of the enactment of this Act [July 18, 1984].”

#### [§ 2517. Repealed. Pub. L. 99-514, title XVIII, § 1852(e)(2)(A), Oct. 22, 1986, 100 Stat. 2868]

Section, added and amended Pub. L. 85-866, title I, §§ 23(f), 68(a), Sept. 2, 1958, 72 Stat. 1623, 1659; Pub. L. 87-792, § 7(j), Oct. 10, 1962, 76 Stat. 830; Mar. 8, 1966, Pub. L. 89-365, § 2(b), 80 Stat. 33; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(24), 83 Stat. 528; Pub. L. 94-455, title XX, § 2009(c) (4), (5), Oct. 4, 1976, 90 Stat. 1895, 1896; Pub. L. 97-34, title III, § 311(d)(2), Aug. 13, 1981, 95 Stat. 280; Pub. L. 98-369, div. A, title IV, § 491(d)(35), July 18, 1984, 98 Stat. 851, related to the transfers of certain annuities under qualified plans.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to transfers after Oct. 22, 1986, see section 1852(e)(2)(E) of Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note under section 406 of this title.

### § 2518. Disclaimers

#### (a) General rule

For purposes of this subtitle, if a person makes a qualified disclaimer with respect to any interest in property, this subtitle shall apply with respect to such interest as if the interest had never been transferred to such person.

#### (b) Qualified disclaimer defined

For purposes of subsection (a), the term “qualified disclaimer” means an irrevocable and unqualified refusal by a person to accept an interest in property but only if—

- (1) such refusal is in writing,
- (2) such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of—
  - (A) the day on which the transfer creating the interest in such person is made, or
  - (B) the day on which such person attains age 21,
- (3) such person has not accepted the interest or any of its benefits, and
- (4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either—
  - (A) to the spouse of the decedent, or
  - (B) to a person other than the person making the disclaimer.

#### (c) Other rules

For purposes of subsection (a)—

##### (1) Disclaimer of undivided portion of interest

A disclaimer with respect to an undivided portion of an interest which meets the re-

quirements of the preceding sentence shall be treated as a qualified disclaimer of such portion of the interest.

#### (2) Powers

A power with respect to property shall be treated as an interest in such property.

#### (3) Certain transfers treated as disclaimers

A written transfer of the transferor's entire interest in the property—

- (A) which meets requirements similar to the requirements of paragraphs (2) and (3) of subsection (b), and
- (B) which is to a person or persons who would have received the property had the transferor made a qualified disclaimer (within the meaning of subsection (b)),

shall be treated as a qualified disclaimer.

(Added Pub. L. 94-455, title XX, § 2009(b)(1), Oct. 4, 1976, 90 Stat. 1893; amended Pub. L. 95-600, title VII, § 702(m)(1), Nov. 6, 1978, 92 Stat. 2935; Pub. L. 97-34, title IV, § 426(a), Aug. 13, 1981, 95 Stat. 318; Pub. L. 97-448, title I, § 104(e), Jan. 12, 1983, 96 Stat. 2384.)

#### AMENDMENTS

1983—Subsec. (c)(3). Pub. L. 97-448 substituted “A written transfer” for “For purposes of subsection (a), a written transfer”.

1981—Subsec. (c)(3). Pub. L. 97-34 added par. (3).

1978—Subsec. (b)(4). Pub. L. 95-600 inserted provision relating to spouse of decedent.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Section 426(b) of Pub. L. 97-34 provided that: “The amendment made by subsection (a) [amending this section] shall apply to transfers creating an interest in the person disclaiming made after December 31, 1981.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(m)(2) of Pub. L. 95-600 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to transfers creating an interest in the person disclaiming made after December 31, 1976.”

#### EFFECTIVE DATE

Section 2009(e)(2) of Pub. L. 94-455 provided that: “The amendments made by subsection (b) [enacting this section and section 2046 of this title and amending sections 2041, 2055, 2056, and 2514 of this title] shall apply with respect to transfers creating an interest in the person disclaiming made after December 31, 1976.”

### § 2519. Dispositions of certain life estates

#### (a) General rule

For purposes of this chapter and chapter 11, any disposition of all or part of a qualifying income interest for life in any property to which this section applies shall be treated as a transfer of all interests in such property other than the qualifying income interest.

#### (b) Property to which this subsection applies

This section applies to any property if a deduction was allowed with respect to the transfer of such property to the donor—

- (1) under section 2056 by reason of subsection (b)(7) thereof, or
- (2) under section 2523 by reason of subsection (f) thereof.

**(c) Cross reference**

**For right of recovery for gift tax in the case of property treated as transferred under this section, see section 2207A(b).**

(Added Pub. L. 97-34, title IV, § 403(d)(3)(B)(i), Aug. 13, 1981, 95 Stat. 304; amended Pub. L. 97-448, title I, § 104(a)(3), (7), Jan. 12, 1983, 96 Stat. 2380, 2381.)

**AMENDMENTS**

1983—Pub. L. 97-448, § 104(a)(3)(B), amended directory language of Pub. L. 97-34, § 403(d)(3)(B)(i), to clarify that this section be inserted at end of subchapter B of chapter 12, rather than at end of subchapter B of chapter 11, and did not involve any change in text.

Subsec. (a). Pub. L. 97-448, § 104(a)(3)(A), substituted “For purposes of this chapter and chapter 11, any disposition” for “Any disposition” and “treated as a transfer of all interests in such property other than the qualifying income interest” for “treated as a transfer of such property”.

Subsec. (c). Pub. L. 97-448, § 104(a)(7), added subsec. (c).

**EFFECTIVE DATE OF 1983 AMENDMENT**

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

**EFFECTIVE DATE**

Section applicable to gifts made after Dec. 31, 1981, see section 403(e)(2) of Pub. L. 97-34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

**Subchapter C—Deductions**

Sec.	
[2521.	Repealed.]
2522.	Charitable and similar gifts.
2523.	Gift to spouse.
2524.	Extent of deductions.

**AMENDMENTS**

1976—Pub. L. 94-455, title XX, § 2001(c)(2)(B)(ii), Oct. 4, 1976, 90 Stat. 1853, struck out item 2521 “Specific exemption”.

**[§ 2521. Repealed. Pub. L. 94-455, title XX, § 2001(b)(3), Oct. 4, 1976, 90 Stat. 1849]**

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 410, allowed a deduction, in the case of a citizen or resident, an exemption of \$30,000, less amounts claimed and allowed for calendar year 1932 and calendar years intervening between that year and year for which tax is being computed.

**§ 2522. Charitable and similar gifts**

**(a) Citizens or residents**

In computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of—

- (1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings insures to the benefit of any private shareholder or individual.

Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

**(b) Nonresidents**

In the case of a nonresident not a citizen of the United States, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to)

any candidate for public office; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

**(c) Disallowance of deductions in certain cases**

(1) No deduction shall be allowed under this section for a gift to of<sup>1</sup> for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for a use, described in subsection (a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) Rules similar to the rules of section 2055(e)(4) shall apply for purposes of paragraph (2).

**(4) Reformations to comply with paragraph (2)**

**(A) In general**

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

**(B) Rules similar to section 2055(e)(3) to apply**

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

**(5) Contributions to donor advised funds**

A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3) or (4) of subsection (a), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

**(d) Special rule for irrevocable transfers of easements in real property**

A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

**(e) Special rules for fractional gifts**

**(1) Denial of deduction in certain cases**

**(A) In general**

No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interest in the property is held immediately before such contribution by—

- (i) the taxpayer, or
- (ii) the taxpayer and the donee.

**(B) Exceptions**

The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

**(2) Valuation of subsequent gifts**

In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

- (A) the fair market value of the property at the time of the initial fractional contribution, or
- (B) the fair market value of the property at the time of the additional contribution.

**(3) Recapture of deduction in certain cases; addition to tax**

**(A) In general**

The Secretary shall provide for the recapture of an amount equal to any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

- (i) in any case in which the donor does not contribute all of the remaining interest in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) before the earlier of—

<sup>1</sup> So in original. Probably should be "or".

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and

(ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)—

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

#### **(B) Addition to tax**

The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be increased by 10 percent of the amount so recaptured.

#### **(4) Definitions**

For purposes of this subsection—

##### **(A) Additional contribution**

The term “additional contribution” means any gift for which a deduction is allowed under subsection (a) or (b) of any interest in a property with respect to which the donor has previously made an initial fractional contribution.

##### **(B) Initial fractional contribution**

The term “initial fractional contribution” means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

#### **(f) Cross references**

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).

(3) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 410; Pub. L. 85-866, title I, §30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 91-172, title II, §201(d)(3), (4)(C), (D), Dec. 30, 1969, 83 Stat. 561, 562; Pub. L. 91-614, title I, §102(c)(2), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94-455, title XII, §§1307(d)(1)(B)(iv), (v), 1313(b)(3), title XIX, §1902(a)(11), (12)(D), title XXI, §2124(e)(3), Oct. 4, 1976, 90 Stat. 1727, 1730, 1805, 1806, 1920; Pub. L. 97-34, title IV, §§423(b), 442(c), Aug. 13, 1981, 95 Stat. 317, 322; Pub. L. 97-248, title II, §286(b)(3), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97-473, title II, §202(b)(7), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98-369, div. A, title X, §§1022(c), 1032(b)(3), July 18, 1984, 98 Stat. 1028, 1034; Pub. L. 99-514, title XIV, §1422(b), Oct. 22, 1986, 100 Stat. 2717; Pub. L. 100-203, title X, §10711(a)(5), (6), Dec. 22, 1987, 101 Stat. 1330-464; Pub. L. 109-280, title XII, §§1218(c), 1234(c), Aug. 17, 2006, 120 Stat. 1082, 1101.)

#### **CODIFICATION**

Sections 1218(c) and 1234(c) of Pub. L. 109-280, which directed the amendment of section 2522 without specifying the act to be amended, were executed to this section, which is section 2522 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

#### **AMENDMENTS**

2006—Subsec. (c)(5). Pub. L. 109-280, §1234(c), added par. (5). See Codification note above.

Subsecs. (e), (f). Pub. L. 109-280, §1218(c), added subsec. (e) and redesignated former subsec. (e) as (f). See Codification note above.

1987—Subsecs. (a)(2), (b)(2), (3). Pub. L. 100-203 inserted “(or in opposition to)” after “on behalf of”.

1986—Subsecs. (d), (e). Pub. L. 99-514 added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (c)(4). Pub. L. 98-369, §1022(c), added par. (4).

Subsec. (d). Pub. L. 98-369, §1032(b)(3), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

1983—Subsec. (d). Pub. L. 97-473 designated existing provisions as par. (1), substituted “bequests” for “gifts” second time appearing in par. (1) as so designated, and added par. (2).

1982—Subsec. (a). Pub. L. 97-248 inserted provision that rules similar to rules of section 501(j) apply for purposes of par. (2).

1981—Subsec. (a). Pub. L. 97-34, §442(c), substituted “year” for “quarter” in two places in provision preceding par. (1).

Subsec. (b). Pub. L. 97-34, §442(c), substituted “year” for “quarter” in provision preceding par. (1).

Subsec. (c)(3). Pub. L. 97-34, §423(b), added par. (3).

1976—Subsec. (a)(1). Pub. L. 94-455, §1902(a)(12)(D), struck out “Territory” after “any State”.

Subsec. (a)(2). Pub. L. 94-455, §§1307(d)(1)(B)(iv), 1313(b)(3), substituted “which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation” for “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation” after “shareholder or individual” and inserted “or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)” after “or educational purposes”.

Subsec. (b)(1). Pub. L. 94-455, §1902(a)(12)(D), struck out “Territory” after “any State”.

Subsec. (b)(2). Pub. L. 94-455, §1307(d)(1)(B)(v), substituted “which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation” for “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation” after “shareholder or individual”.

Subsec. (c)(2). Pub. L. 94-455, §2124(e)(3), substituted “(other than an interest described in section 170(f)(3)(B))” for “(other than a remainder interest in a personal residence or farm or an undivided portion of the donor's entire interest in property)” after “an interest in property”.

Subsec. (d). Pub. L. 94-455, §1902(a)(11), substituted subsec. (d) for former subsec. (d), pars. (1) through (10), which dealt with cross references to specific exemptions and rules of construction for gifts to the United States and its instrumentalities.

1970—Pub. L. 91-614 substituted “quarter” for “year” in three places.

1969—Subsecs. (a)(2), (b)(2), (3). Pub. L. 91-172, §201(d)(4)(C), (D), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (c). Pub. L. 91-172, §201(d)(3), substituted substantive provisions for simple reference to sections 503 and 681 in which such substantive provisions were formerly set out.

1958—Subsec. (c). Pub. L. 85-866 substituted “503” for “504”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1218(c) of Pub. L. 109-280 applicable to contributions, bequests, and gifts made after Aug. 17, 2006, see section 1218(d) of Pub. L. 109-280, set out as a note under section 170 of this title.

Amendment by section 1234(c) of Pub. L. 109-280 applicable to contributions made after the date which is 180 days after Aug. 17, 2006, see section 1234(d) of Pub. L. 109-280, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100-203, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to transfers and contributions made after Dec. 31, 1986, see section 1422(e) of Pub. L. 99-514, set out as a note under section 2055 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1022(c) of Pub. L. 98-369 applicable to reformations after Dec. 31, 1978, but inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98-369, set out as a note under section 2055 of this title.

Amendment by section 1032(b)(3) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98-369, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(4) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97-248, set out as a note under section 501 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Section 423(c)(2) of Pub. L. 97-34 provided that: “The amendment made by subsection (b) [amending this section] shall apply to transfers after December 31, 1981.”

Amendment by section 442(c) of Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2124(e)(3) of Pub. L. 94-455 applicable with respect to contributions or transfers made after June 13, 1976, see section 2124(e)(4) of Pub. L. 94-455, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(3) of Pub. L. 91-172 applicable to gifts made after Dec. 31, 1969, except that the amendment of par. (2) of subsec. (c) applicable to gifts made after July 31, 1969, see section 201(g)(4)(D) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment by section 201(d)(4)(C), (D) of Pub. L. 91-172 applicable to gifts and transfers made after Dec.

31, 1969, see section 201(g)(4)(E) of Pub. L. 91-172, set out as a note under section 170 of this title.

#### CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

For inclusion of provisions comparable to section 2055(e)(3) of this title in this section, see section 514(b) of Pub. L. 95-600, set out as a note under section 2055 of this title.

### § 2523. Gift to spouse

#### (a) Allowance of deduction

Where a donor transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to its value.

#### (b) Life estate or other terminable interest

Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest—

(1) if the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse; or

(2) if the donor immediately after the transfer to the donee spouse has a power to appoint an interest in such property which he can exercise (either alone or in conjunction with any person) in such manner that the appointee may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse. For purposes of this paragraph, the donor shall be considered as having immediately after the transfer to the donee spouse such power to appoint even though such power cannot be exercised until after the lapse of time, upon the occurrence of an event or contingency, or on the failure of an event or contingency to occur.

An exercise or release at any time by the donor, either alone or in conjunction with any person, of a power to appoint an interest in property, even though not otherwise a transfer, shall, for purposes of paragraph (1), be considered as a transfer by him. Except as provided in subsection (e), where at the time of the transfer it is impossible to ascertain the particular person or persons who may receive from the donor an interest in property so transferred by him, such interest shall, for purposes of paragraph (1), be considered as transferred to a person other than the donee spouse.

#### (c) Interest in unidentified assets

Where the assets out of which, or the proceeds of which, the interest transferred to the donee



spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets were transferred from the donor to such spouse, then the value of the interest transferred to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

**(d) Joint interests**

If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, shall not be considered for purposes of subsection (b) as an interest retained by the donor in himself.

**(e) Life estate with power of appointment in donee spouse**

Where the donor transfers an interest in property, if by such transfer his spouse is entitled for life to all of the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the donee spouse to appoint the entire interest, or such specific portion (exercisable in favor of such donee spouse, or of the estate of such donee spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of such interest, or such portion, to any person other than the donee spouse—

(1) the interest, or such portion, so transferred shall, for purposes of subsection (a) be considered as transferred to the donee spouse, and

(2) no part of the interest, or such portion, so transferred shall, for purposes of subsection (b)(1), be considered as retained in the donor or transferred to any person other than the donee spouse.

This subsection shall apply only if, by such transfer, such power in the donee spouse to appoint the interest, or such portion, whether exercisable by will or during life, is exercisable by such spouse alone and in all events. For purposes of this subsection, the term “specific portion” only includes a portion determined on a fractional or percentage basis.

**(f) Election with respect to life estate for donee spouse**

**(1) In general**

In the case of qualified terminable interest property—

(A) for purposes of subsection (a), such property shall be treated as transferred to the donee spouse, and

(B) for purposes of subsection (b)(1), no part of such property shall be considered as retained in the donor or transferred to any person other than the donee spouse.

**(2) Qualified terminable interest property**

For purposes of this subsection, the term “qualified terminable interest property” means any property—

(A) which is transferred by the donor spouse,

(B) in which the donee spouse has a qualifying income interest for life, and

(C) to which an election under this subsection applies.

**(3) Certain rules made applicable**

For purposes of this subsection, rules similar to the rules of clauses (ii), (iii), and (iv) of section 2056(b)(7)(B) shall apply and the rules of section 2056(b)(10) shall apply.

**(4) Election**

**(A) Time and manner**

An election under this subsection with respect to any property shall be made on or before the date prescribed by section 6075(b) for filing a gift tax return with respect to the transfer (determined without regard to section 6019(2)) and shall be made in such manner as the Secretary shall by regulations prescribe.

**(B) Election irrevocable**

An election under this subsection, once made, shall be irrevocable.

**(5) Treatment of interest retained by donor spouse**

**(A) In general**

In the case of any qualified terminable interest property—

(i) such property shall not be includible in the gross estate of the donor spouse, and

(ii) any subsequent transfer by the donor spouse of an interest in such property shall not be treated as a transfer for purposes of this chapter.

**(B) Subparagraph (A) not to apply after transfer by donee spouse**

Subparagraph (A) shall not apply with respect to any property after the donee spouse is treated as having transferred such property under section 2519, or such property is includible in the donee spouse's gross estate under section 2044.

**(6) Treatment of joint and survivor annuities**

In the case of a joint and survivor annuity where only the donor spouse and donee spouse have the right to receive payments before the death of the last spouse to die—

(A) the donee spouse's interest shall be treated as a qualifying income interest for life,

(B) the donor spouse shall be treated as having made an election under this subsection with respect to such annuity unless the donor spouse otherwise elects on or before the date specified in paragraph (4)(A),

(C) paragraph (5) and section 2519 shall not apply to the donor spouse's interest in the annuity, and

(D) if the donee spouse dies before the donor spouse, no amount shall be includible in the gross estate of the donee spouse under section 2044 with respect to such annuity.

An election under subparagraph (B), once made, shall be irrevocable.

**(g) Special rule for charitable remainder trusts**

**(1) In general**

If, after the transfer, the donee spouse is the only noncharitable beneficiary (other than the

donor) of a qualified charitable remainder trust, subsection (b) shall not apply to the interest in such trust which is transferred to the donee spouse.

## (2) Definitions

For purposes of paragraph (1), the term “noncharitable beneficiary” and “qualified charitable remainder trust” have the meanings given to such terms by section 2056(b)(8)(B).<sup>1</sup>

## (h) Denial of double deduction

Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same donor.

## (i) Disallowance of marital deduction where spouse not citizen

If the spouse of the donor is not a citizen of the United States—

(1) no deduction shall be allowed under this section,

(2) section 2503(b) shall be applied with respect to gifts which are made by the donor to such spouse and with respect to which a deduction would be allowable under this section but for paragraph (1) by substituting “\$100,000” for “\$10,000”, and

(3) the principles of sections 2515 and 2515A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981) shall apply, except that the provisions of such section 2515 providing for an election shall not apply.

This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 412; Pub. L. 91-614, title I, §102(c)(3), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94-455, title XIX, §1902(a)(12)(E), title XX, §2002(b), Oct. 4, 1976, 90 Stat. 1806, 1854; Pub. L. 97-34, title IV, §403(b)(1), (2), (d)(2), Aug. 13, 1981, 95 Stat. 301, 303; Pub. L. 97-448, title I, §104(a)(2)(B), (4)–(6), Jan. 12, 1983, 96 Stat. 2380, 2381; Pub. L. 99-514, title XVIII, §1879(n)(1), Oct. 22, 1986, 100 Stat. 2910; Pub. L. 100-647, title V, §5033(b), title VI, §6152(b), Nov. 10, 1988, 102 Stat. 3672, 3725; Pub. L. 101-239, title VII, §7815(d)(1)(A), (2), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 101-508, title XI, §11702(g)(1), Nov. 5, 1990, 104 Stat. 1388-515; Pub. L. 102-486, title XIX, §1941(b), Oct. 24, 1992, 106 Stat. 3036; Pub. L. 105-34, title XVI, §1604(g)(4), Aug. 5, 1997, 111 Stat. 1099.)

## ADJUSTMENT OF ANNUAL EXCLUSION FOR GIFTS IN CALENDAR YEAR 2007 TO SPOUSE WHO IS NOT UNITED STATES CITIZEN

*For adjustment of dollar amounts of gifts not includible in total amount of taxable gifts under subsection (i)(2) of this section for calendar year 2007, see section 3.32(2) of Revenue Procedure 2006-53, set out as a note under section 1 of this title.*

## REFERENCES IN TEXT

Section 2056 of this title, referred to in subsec. (g)(2), was subsequently amended, and section 2056(b)(8)(B) no longer defines the term “noncharitable beneficiary”.

Sections 2515 and 2515A, referred to in subsec. (i)(3), were repealed by Pub. L. 97-34, title IV, §403(c)(3)(B), Aug. 13, 1981, 95 Stat. 302.

## AMENDMENTS

1997—Subsec. (g)(1). Pub. L. 105-34 substituted “qualified charitable remainder trust” for “qualified remainder trust”.

1992—Subsec. (e). Pub. L. 102-486, §1941(b)(1), in closing provisions, inserted at end “For purposes of this subsection, the term ‘specific portion’ only includes a portion determined on a fractional or percentage basis.”

Subsec. (f)(3). Pub. L. 102-486, §1941(b)(2), inserted before period at end “and the rules of section 2056(b)(10) shall apply”.

1990—Subsec. (i). Pub. L. 101-508 inserted at end “This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6).”

1989—Subsec. (a). Pub. L. 101-239, §7815(d)(2), struck out “who is a citizen or resident” after “Where a donor”.

Subsec. (i)(2). Pub. L. 101-239, §7815(d)(1)(A), substituted “which are made by the donor to such spouse and with respect to which a deduction would be allowable under this section but for paragraph (1)” for “made by the donor to such spouse”.

1988—Subsec. (f)(6). Pub. L. 100-647, §6152(b), added par. (6).

Subsec. (i). Pub. L. 100-647, §5033(b), added subsec. (i).

1986—Subsec. (f)(4)(A). Pub. L. 99-514 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “An election under this subsection with respect to any property shall be made on or before the first April 15th after the calendar year in which the interest was transferred and shall be made in such manner as the Secretary shall by regulations prescribe.”

1983—Subsec. (f)(3). Pub. L. 97-448, §104(a)(6), substituted “rules similar to the rules of clauses (ii)” for “the rules of clauses (ii)”.

Subsec. (f)(4). Pub. L. 97-448, §104(a)(4), divided existing provisions into subpars. (A) and (B), in subpar. (A) as so designated substituted “shall be made on or before the first April 15th after the calendar year in which the interest was transferred and shall be made in such manner as the Secretary shall by regulations prescribe” for “shall be made on the return of the tax imposed by section 2501 for the calendar year in which the interest was transferred”, and in subpar. (B) as so designated substituted “An election under this subsection” for “Such an election”.

Subsec. (f)(5). Pub. L. 97-448, §104(a)(5), added par. (5).

Subsec. (h). Pub. L. 97-448, §104(a)(2)(B), added subsec. (h).

1981—Subsec. (a). Pub. L. 97-34, §403(b)(1), struck out “(1) In general” designation for existing text and struck out par. (2) which declared that the aggregate of the allowed deductions for any calendar quarter should not exceed the sum of \$100,000 reduced, but not below zero, by the aggregate of the allowed deductions for preceding calendar quarters beginning after Dec. 31, 1976, plus 50 percent of the lesser of the amount of the allowed deductions for such calendar quarter, determined without regard to par. (2), or the amount, if any, by which the aggregate determined under cl. (i) of par. (2) for the calendar quarter and for each preceding calendar quarter beginning after Dec. 31, 1976, exceeds \$200,000.

Subsec. (f). Pub. L. 97-34, §403(b)(2), (d)(2), substituted provision relating to election with respect to life estate for donee spouse for provision relating to community property.

Subsec. (g). Pub. L. 97-34, §403(d)(2), added subsec. (g).  
1976—Subsec. (a). Pub. L. 94-455 designated existing provisions as par. (1), struck out “one-half of” after

<sup>1</sup> See References in Text note below.

“interest equal to”, and added par. (2) relating to limitations on aggregate amount of deductions.

Subsec. (f)(1). Pub. L. 94-455, §1902(a)(12)(E), struck out “Territory” after “any State”.

1970—Subsec. (a). Pub. L. 91-614 substituted “quarter” for “year” in two places.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-486 applicable to gifts made after Oct. 24, 1992, see section 1941(c)(2) of Pub. L. 102-486, set out as a note under section 2056 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 11702(j) of Pub. L. 101-508, set out as a note under section 59 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 7815(d)(1)(B) of Pub. L. 101-239 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply with respect to gifts made after June 29, 1989.”

Amendment by section 7815(d)(2) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 5033(d)(2) of Pub. L. 100-647 provided that: “The amendments made by subsection (b) [amending this section] shall apply to gifts on or after July 14, 1988.”

Amendment by section 6152(b) of Pub. L. 100-647 applicable to transfers after Dec. 31, 1981, and, in the case of any estate or gift tax return filed before Nov. 10, 1988, such amendment inapplicable to the extent it would be inconsistent with the treatment of the annuity on such return unless executor or donor otherwise elects before the day 2 years after Nov. 10, 1988, the time for making such an election not to expire before such date, see section 6152(c), of Pub. L. 100-647, set out as a note under section 2056 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 1879(n)(2) of Pub. L. 99-514 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to transfers made after December 31, 1985.”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to gifts made after Dec. 31, 1981, see section 403(e)(2) of Pub. L. 97-34, set out as a note under section 2056 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 2002(d)(2) of Pub. L. 94-455 provided that: “The amendment made by subsection (b) [amending this section] shall apply to gifts made after December 31, 1976.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of

Pub. L. 91-614, set out as a note under section 2501 of this title.

#### APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100-647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

For provisions directing that in the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of Pub. L. 100-647 shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions, but that in the case of the estate of an individual dying before the date 3 years after Dec. 19, 1989, or a gift by an individual before the date 3 years after Dec. 19, 1989, the requirement of the preceding provision that the individual not be a citizen or resident of the United States shall not apply, see section 7815(d)(14) of Pub. L. 101-239, set out as a note under section 2056 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### SPECIAL RULE FOR CERTAIN TRANSFERS IN OCTOBER 1984

Section 1879(n)(3) of Pub. L. 99-514 provided that: “An election under section 2523(f) of the Internal Revenue Code of 1954 [now 1986] with respect to an interest in property which—

“(A) was transferred during October 1984, and

“(B) was transferred pursuant to a trust instrument stating that the grantor’s intention was that the property of the trust would constitute qualified terminable interest property as to which a Federal gift tax marital deduction would be allowed upon the grantor’s election,

shall be made on the return of tax imposed by section 2501 of such Code for the calendar year 1984 which is filed on or before the due date of such return or, if a timely return is not filed, on the first such return filed after the due date of such return and before December 31, 1986.”

### § 2524. Extent of deductions

The deductions provided in sections 2522 and 2523 shall be allowed only to the extent that the gifts therein specified are included in the amount of gifts against which such deductions are applied.

(Aug. 16, 1954, ch. 736, 68A Stat. 414.)

## CHAPTER 13—TAX ON GENERATION-SKIPPING TRANSFERS

Subchapter	Sec. <sup>1</sup>
A. Tax imposed .....	2601
B. Generation-skipping transfers .....	2611
C. Taxable amount .....	2621
D. GST exemption .....	2631
E. Applicable rate; inclusion ratio .....	2641
F. Other definitions and special rules .....	2651
G. Administration .....	2661

<sup>1</sup> Section numbers editorially supplied.

## AMENDMENTS

1986—Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2717, struck out “CERTAIN” after “TAX ON” in chapter heading, substituted “Generation-skipping transfers” for “Definitions and special rules” in item for subchapter B and “Taxable amount” for “Administration” in item for subchapter C, and added items for subchapters D, E, and F.

**Subchapter A—Tax Imposed**

Sec.	
2601.	Tax imposed.
2602.	Amount of tax.
2603.	Liability for tax.
2604.	Credit for certain State taxes.

## AMENDMENT OF ANALYSIS

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note set out under section 2011 of this title.*

## AMENDMENTS

2004—Pub. L. 108-311, title IV, §408(a)(21), Oct. 4, 2004, 118 Stat. 1192, added item 2604.

2001—Pub. L. 107-16, title V, §532(c)(15), (d), title IX, §901, June 7, 2001, 115 Stat. 75, 150, temporarily struck out item 2604 “Credit for certain State taxes”. See Effective and Termination Dates of 2001 Amendment note set out under section 2011 of this title.

1986—Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2717, in amending analysis of subchapter A generally, added item 2604.

**§ 2601. Tax imposed**

A tax is hereby imposed on every generation-skipping transfer (within the meaning of subchapter B).

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1879; amended Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718.)

## AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting “(within the meaning of subchapter B)” for “in the amount determined under section 2602”.

## EFFECTIVE DATE OF 1986 AMENDMENT

Section 1433 of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, §1014(h)(1)-(3)(A), (4), Nov. 10, 1988, 102 Stat. 3567, 3568, provided that:

“(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle D (§§1431-1433) of title XIV of Pub. L. 99-514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] shall apply to any generation-skipping transfer (within the meaning of section 2611 of the Internal Revenue Code of 1986) made after the date of the enactment of this Act [Oct. 22, 1986].

“(b) SPECIAL RULES.—

“(1) TREATMENT OF CERTAIN INTER VIVOS TRANSFERS MADE AFTER SEPTEMBER 25, 1985.—For purposes of subsection (a) (and chapter 13 of the Internal Revenue Code of 1986 as amended by this part), any inter vivos transfer after September 25, 1985, and on or before the date of the enactment of this Act [Oct. 22, 1986] shall be treated as if it were made on the 1st day after the date of enactment of this Act.

“(2) EXCEPTIONS.—The amendments made by this subtitle shall not apply to—

“(A) any generation-skipping transfer under a trust which was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after Septem-

ber 25, 1985 (or out of income attributable to corpus so added),

“(B) any generation-skipping transfer under a will or revocable trust executed before the date of the enactment of this Act [Oct. 22, 1986] if the decedent dies before January 1, 1987, and

“(C) any generation-skipping transfer—

“(i) under a trust to the extent such trust consists of property included in the gross estate of a decedent (other than property transferred by the decedent during his life after the date of the enactment of this Act [Oct. 22, 1986]), or reinvestments thereof, or

“(ii) which is a direct skip which occurs by reason of the death of any decedent;

but only if such decedent was, on the date of the enactment of this Act [Oct. 22, 1986], under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

“(3) TREATMENT OF CERTAIN TRANSFERS TO GRANDCHILDREN.—

“(A) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the term ‘direct skip’ shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent the aggregate transfers from such transferor to such grandchild do not exceed \$2,000,000.

“(B) TREATMENT OF TRANSFERS IN TRUST.—For purposes of subparagraph (A), a transfer in trust for the benefit of a grandchild shall be treated as a transfer to such grandchild if (and only if)—

“(i) during the life of the grandchild, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such grandchild,

“(ii) the assets of the trust will be includible in the gross estate of the grandchild if the grandchild dies before the trust is terminated, and

“(iii) all of the income of the trust for periods after the grandchild has attained age 21 will be distributed to (or for the benefit of) such grandchild not less frequently than annually.

“(C) COORDINATION WITH SECTION 2653(a) OF THE 1986 CODE.—In the case of any transfer which would be a generation-skipping transfer but for subparagraph (A), the rules of section 2653(a) of the Internal Revenue Code of 1986 shall apply as if such transfer were a generation-skipping transfer.

“(D) COORDINATION WITH TAXABLE TERMINATIONS AND TAXABLE DISTRIBUTIONS.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the terms ‘taxable termination’ and ‘taxable distribution’ shall not include any transfer which would be a direct skip but for subparagraph (A).

“(4) DEFINITIONS.—Terms used in this section shall have the same respective meanings as when used in chapter 13 of the Internal Revenue Code of 1986; except that section 2612(c)(2) of such Code shall not apply in determining whether an individual is a grandchild of the transferor.

“(c) REPEAL OF EXISTING TAX ON GENERATION-SKIPPING TRANSFERS.—

“(1) IN GENERAL.—In the case of any tax imposed by chapter 13 of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]), such tax (including interest, additions to tax, and additional amounts) shall not be assessed and if assessed, the assessment shall be abated, and if collected, shall be credited or refunded (with interest) as an overpayment.

“(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of paragraph (1) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim

therefore [sic] is filed before the date 1 year after the date of the enactment of this Act.

“(d) ELECTION FOR CERTAIN TRANSFERS BENEFITING GRANDCHILD.—

“(1) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986 (as amended by this Act) and subsection (b) of this section, any transfer in trust for the benefit of a grandchild of a transferor shall be treated as a direct skip to such grandchild if—

“(A) the transfer occurs before the date of enactment of this Act [Oct. 22, 1986],

“(B) the transfer would be a direct skip to a grandchild except for the fact that the trust instrument provides that, if the grandchild dies before vesting of the interest transferred, the interest is transferred to the grandchild's heir (rather than the grandchild's estate), and

“(C) an election under this subsection applies to such transfer.

Any transfer treated as a direct skip by reason of the preceding sentence shall be subject to Federal estate tax on the grandchild's death in the same manner as if the contingent gift over had been to the grandchild's estate.

“(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

Unless the grandchild otherwise directs by will, the estate of such grandchild shall be entitled to recover from the person receiving the property on the death of the grandchild any increase in Federal estate tax on the estate of the grandchild by reason of the preceding sentence.”

[Pub. L. 101-508, title XI, §11703(c)(3), Nov. 5, 1990, 104 Stat. 1388-517, provided that: “Subparagraph (C) of section 1433(b)(2) of the Tax Reform Act of 1986 [Pub. L. 99-514, set out above] shall not exempt any generation-skipping transfer from the amendments made by subtitle D of title XVI of such Act [probably means subtitle D (§§1431-1433) of title XIV of Pub. L. 99-514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] to the extent such transfer is attributable to property transferred by gift or by reason of the death of another person to the decedent (or trust) referred to in such subparagraph after August 3, 1990.”]

[Section 1014(h)(3)(B) of Pub. L. 100-647 provided that: “Clause (iii) of section 1443(b)(3)(B) [1433(b)(3)(B)] of the Reform Act [Pub. L. 99-514, set out above] (as amended by subparagraph (A)) shall apply only to transfers after June 10, 1987.”]

[Section 1014(h)(5) of Pub. L. 100-647 provided that: “Subparagraph (C) of section 1433(b)(2) of the Reform Act [Pub. L. 99-514, set out above] shall not exempt any direct skip from the amendments made by subtitle D of title XIV of the Reform Act [Pub. L. 99-514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] if—

“(A) such direct skip results from the application of section 2044 of the 1986 Code, and

“(B) such direct skip is attributable to property transferred to the trust after October 21, 1988.”]

#### EFFECTIVE DATE

Section 2006(c) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, §702(n)(1), Nov. 6, 1978, 92 Stat. 2935; Pub. L. 97-34, title IV, §428, Aug. 13, 1981, 95 Stat. 319; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this chapter and amending sections 303, 691, and 2013 of this title] shall apply to any generation-skipping transfer (within the meaning of section 2611(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) made after June 11, 1976.

“(2) EXCEPTIONS.—The amendments made by this section shall not apply to any generation-skipping transfer—

“(A) under a trust which was irrevocable on June 11, 1976, but only to the extent that the transfer is not made out of corpus added to the trust after June 11, 1976, or

“(B) in the case of a decedent dying before January 1, 1983, pursuant to a will (or revocable trust) which was in existence on June 11, 1976, and was not amended at any time after that date in any respect which will result in the creation of, or increasing the amount of, any generation-skipping transfer.

For purposes of subparagraph (B), if the decedent on June 11, 1976, was under a mental disability to change the disposition of his property, the period set forth in such subparagraph shall not expire before the date which is 2 years after the date on which he first regains his competence to dispose of such property.

“(3) TRUST EQUIVALENTS.—For purposes of paragraph (2), in the case of a trust equivalent within the meaning of subsection (d) of section 2611 of the Internal Revenue Code of 1986, the provisions of such subsection (d) shall apply.”

[Amendment of section 2006(c) of Pub. L. 94-455, set out above, by section 702(n)(1) of Pub. L. 95-600, effective Oct. 4, 1976, see section 702(n)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 2613 of this title.]

#### § 2602. Amount of tax

The amount of the tax imposed by section 2601 is—

(1) the taxable amount (determined under subchapter C), multiplied by

(2) the applicable rate (determined under subchapter E).

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1879; amended Pub. L. 95-600, title VII, §702(h)(2), (n)(4), Nov. 6, 1978, 92 Stat. 2931, 2936; Pub. L. 97-34, title IV, §403(a)(2)(B), Aug. 13, 1981, 95 Stat. 301; Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718.)

#### AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting provisions that amount of tax imposed by section 2601 is the taxable amount (determined under subchapter C), multiplied by the applicable rate (determined under subchapter E) for former provisions which set out in detail the calculations and formulae for determining amount of tax imposed by section 2601.

1981—Subsec. (c)(5). Pub. L. 97-34 redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) relating to adjustments to marital deduction and providing that if the generation-skipping transfer occurs at the same time as, or within 9 months after, the death of the deemed transferor, for purposes of section 2056, relating to bequests, etc., to surviving spouse, the value of the gross estate of the deemed transferor shall be deemed to be increased by the amount of such transfer.

1978—Subsec. (a)(1)(C). Pub. L. 95-600, §702(h)(2), inserted “, as modified by section 2001(e)” after “within the meaning of section 2001(b)”.

Subsec. (d)(1)(A). Pub. L. 95-600, §702(n)(4)(A), inserted “(or at the same time as the death of a beneficiary of the trust assigned to a higher generation than such deemed transferor)” after “such deemed transferor”.

Subsec. (d)(2)(A). Pub. L. 95-600, §702(n)(4)(B), inserted “(or beneficiary)” after “the deemed transferor”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, but inapplicable under certain conditions under will executed before date which is 30 days after Aug. 13, 1981, or under trust created by such date, see section 403(e) of Pub. L. 97-34, set out as a note under section 2056 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 702(h)(2) of Pub. L. 95-600 applicable to estates of decedents dying after Dec. 31, 1976, except that such amendment shall not apply to transfers made before Jan. 1, 1977, see section 702(h)(3) of Pub. L. 95-600, set out as a note under section 2001 of this title.

Amendment by section 702(n)(4) of Pub. L. 95-600 effective as if included in this chapter as added by section 2006 of Pub. L. 94-455, see section 702(n)(5) of Pub. L. 95-600, set out as a note under section 2613 of this title.

**§ 2603. Liability for tax****(a) Personal liability****(1) Taxable distributions**

In the case of a taxable distribution, the tax imposed by section 2601 shall be paid by the transferee.

**(2) Taxable termination**

In the case of a taxable termination or a direct skip from a trust, the tax shall be paid by the trustee.

**(3) Direct skip**

In the case of a direct skip (other than a direct skip from a trust), the tax shall be paid by the transferor.

**(b) Source of tax**

Unless otherwise directed pursuant to the governing instrument by specific reference to the tax imposed by this chapter, the tax imposed by this chapter on a generation-skipping transfer shall be charged to the property constituting such transfer.

**(c) Cross reference**

**For provisions making estate and gift tax provisions with respect to transferee liability, liens, and related matters applicable to the tax imposed by section 2601, see section 2661.**

(Added Pub. L. 94-455, title XX, § 2006(a), Oct. 4, 1976, 90 Stat. 1881; amended Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718.)

## AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting tax liability provisions consisting of language placing liability, under different circumstances, on the transferee, the trustee, or the transferor, the source of the tax, and a cross reference to section 2661 for former provisions which covered the question of liability for tax with language covering the trustee and the distributee, the limitation on personal liability of the trustee who relied on certain information furnished by the Secretary, the limitation on personal liability of distributee, and the lien on property transferred until the tax was paid in full or became unenforceable by reason of lapse of time.

## EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2604. Credit for certain State taxes****(a) General rule**

If a generation-skipping transfer (other than a direct skip) occurs at the same time as and as a result of the death of an individual, a credit against the tax imposed by section 2601 shall be allowed in an amount equal to the generation-skipping transfer tax actually paid to any State in respect to any property included in the generation-skipping transfer.

**(b) Limitation**

The aggregate amount allowed as a credit under this section with respect to any transfer shall not exceed 5 percent of the amount of the tax imposed by section 2601 on such transfer.

**(c) Termination**

This section shall not apply to the generation-skipping transfers after December 31, 2004.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718; amended Pub. L. 107-16, title V, § 532(c)(10), June 7, 2001, 115 Stat. 75.)

## AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

## AMENDMENTS

2001—Subsec. (c). Pub. L. 107-16, §§ 532(c)(10), 901, temporarily added subsec. (c). See Effective and Termination Dates of 2001 Amendment note below.

## EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

## EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**Subchapter B—Generation-Skipping Transfers**

## Sec.

- 2611. Generation-skipping transfer defined.
- 2612. Taxable termination; taxable distribution; direct skip.
- 2613. Skip person and non-skip person defined.

## AMENDMENTS

1986—Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718, substituted “Generation-Skipping Transfers” for “Definitions and Special Rules” in subchapter heading, substituted “Generation-skipping transfer defined” for “Generation-skipping transfer” in item 2611, “Taxable termination; taxable distribution; direct skip” for “Deemed transferor” in item 2612, and “Skip person and non-skip person defined” for “Other definitions” in item 2613, and struck out item 2614 “Special rules”.

**§ 2611. Generation-skipping transfer defined****(a) In general**

For purposes of this chapter, the term “generation-skipping transfer” means—

- (1) a taxable distribution,
- (2) a taxable termination, and
- (3) a direct skip.

**(b) Certain transfers excluded**

The term “generation-skipping transfer” does not include—

- (1) any transfer which, if made inter vivos by an individual, would not be treated as a taxable gift by reason of section 2503(e) (relating to exclusion of certain transfers for educational or medical expenses), and
- (2) any transfer to the extent—
  - (A) the property transferred was subject to a prior tax imposed under this chapter,
  - (B) the transferee in the prior transfer was assigned to the same generation as (or a lower generation than) the generation assignment of the transferee in this transfer, and
  - (C) such transfers do not have the effect of avoiding tax under this chapter with respect to any transfer.

(Added Pub. L. 94-455, title XX, § 2006(a), Oct. 4, 1976, 90 Stat. 1882; amended Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718; Pub. L. 100-647, title I, §§ 1014(g)(1), (2), 1018(u)(43), Nov. 10, 1988, 102 Stat. 3562, 3592.)

**AMENDMENTS**

1988—Subsec. (a). Pub. L. 100-647, §§ 1014(g)(1), 1018(u)(43), substituted “generation-skipping transfer” for “generation-skipping transfers” and “means” for “mean”.

Subsec. (b). Pub. L. 100-647, § 1014(g)(2), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: “any transfer (other than a direct skip) from a trust, to the extent such transfer is subject to a tax imposed by chapter 11 or 12 with respect to a person in the 1st generation below that of the grantor, and”.

1986—Pub. L. 99-514 amended section generally, substituting provisions defining “generation-skipping transfers” and what that term does not include, for former provisions which defined “generation-skipping transfer”, “transfer”, and “generation-skipping trust”, contained provisions to be used in determining the ascertainment of generation, and provided for a generation-skipping trust equivalent.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2612. Taxable termination; taxable distribution; direct skip****(a) Taxable termination****(1) General rule**

For purposes of this chapter, the term “taxable termination” means the termination (by

death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless—

(A) immediately after such termination, a non-skip person has an interest in such property, or

(B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

**(2) Certain partial terminations treated as taxable**

If, upon the termination of an interest in property held in trust by reason of the death of a lineal descendant of the transferor, a specified portion of the trust’s assets are distributed to 1 or more skip persons (or 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property.

**(b) Taxable distribution**

For purposes of this chapter, the term “taxable distribution” means any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

**(c) Direct skip**

For purposes of this chapter—

**(1) In general**

The term “direct skip” means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

**(2) Look-thru rules not to apply**

Solely for purposes of determining whether any transfer to a trust is a direct skip, the rules of section 2651(f)(2) shall not apply.

(Added Pub. L. 94-455, title XX, § 2006(a), Oct. 4, 1976, 90 Stat. 1883; amended Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2719; Pub. L. 100-647, title I, § 1014(g)(5)(B), (7), (15), Nov. 10, 1988, 102 Stat. 3564-3566; Pub. L. 105-34, title V, § 511(b), Aug. 5, 1997, 111 Stat. 861.)

**AMENDMENTS**

1997—Subsec. (c)(2). Pub. L. 105-34, § 511(b)(2), substituted “section 2651(f)(2)” for “section 2651(e)(2)”.

Pub. L. 105-34, § 511(b)(1), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: “For purposes of determining whether any transfer is a direct skip, if—

“(A) an individual is a grandchild of the transferor (or the transferor’s spouse or former spouse), and

“(B) as of the time of the transfer, the parent of such individual who is a lineal descendant of the transferor (or the transferor’s spouse or former spouse) is dead,

such individual shall be treated as if such individual were a child of the transferor and all of that grandchild’s children shall be treated as if they were grandchildren of the transferor. In the case of lineal descendants below a grandchild, the preceding sentence may be reapplied. If any transfer of property to a trust would be a direct skip but for this paragraph, any generation assignment under this paragraph shall apply also for purposes of applying this chapter to transfers from the portion of the trust attributable to such property.”

Subsec. (c)(3). Pub. L. 105-34, § 511(b)(1), redesignated par. (3) as (2).

1988—Subsec. (a)(2). Pub. L. 100-647, § 1014(g)(15), amended par. (2) generally. Prior to amendment, par.

(2) read as follows: “If, upon the termination of an interest in property held in a trust, a specified portion of the trust assets are distributed to skip persons who are lineal descendants of the holder of such interest (or to 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property.”

Subsec. (c)(2). Pub. L. 100-647, §1014(g)(7), in closing provisions, inserted at end “If any transfer of property to a trust would be a direct skip but for this paragraph, any generation assignment under this paragraph shall apply also for purposes of applying this chapter to transfers from the portion of the trust attributable to such property.”

Subsec. (c)(3). Pub. L. 100-647, §1014(g)(5)(B), added par. (3).

1986—Pub. L. 99-514 amended section generally, substituting provisions covering definition and application of “taxable termination”, “taxable distribution”, and “direct skip” for former provisions which indicated who the “deemed transferor” would be for purposes of this chapter and that, for purposes of determining the person deemed the transferor, a parent related to the grantor of a trust by blood or adoption was to be deemed more closely related than a parent related to a grantor by marriage.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 511(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and section 2651 of this title] shall apply to terminations, distributions, and transfers occurring after December 31, 1997.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

### § 2613. Skip person and non-skip person defined

#### (a) Skip person

For purposes of this chapter, the term “skip person” means—

(1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or

(2) a trust—

(A) if all interests in such trust are held by skip persons, or

(B) if—

(i) there is no person holding an interest in such trust, and

(ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a nonskip person.

#### (b) Non-skip person

For purposes of this chapter, the term “non-skip person” means any person who is not a skip person.

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1884; amended Pub. L. 95-600, title VII, §702(n)(2), (3), Nov. 6, 1978, 92 Stat. 2935, 2936; Pub. L. 96-222, title I, §107(a)(2)(B), Apr. 1, 1980,

94 Stat. 222; Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720; Pub. L. 100-647, title I, §1014(g)(5)(A), Nov. 10, 1988, 102 Stat. 3564.)

#### AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100-647 inserted “natural” before “person”.

1986—Pub. L. 99-514 amended section generally, substituting definitions of “skip person” and “non-skip person” for former provisions which defined and applied the terms “taxable distribution”, “taxable termination”, “younger generation beneficiary”, and “related or subordinate trustee”.

1980—Subsec. (e)(2)(A)(i). Pub. L. 96-222, §107(a)(2)(B)(i), inserted “(other than as a potential appointee under a power of appointment held by another)” after “trust”.

Subsec. (e)(2)(B). Pub. L. 96-222, §107(a)(2)(B)(ii), redesignated cls. (iii) to (v) as (iv) to (vi), added cl. (iii), and struck out cl. (vi) which related to an employee of a corporation in which the grantor or any beneficiary of the trust is an executive.

1978—Subsec. (b)(2)(B). Pub. L. 95-600, §702(n)(3), substituted “a present interest and a present power” for “an interest and a power” and “present interest or present power” for “interest or power” wherever appearing.

Subsec. (e). Pub. L. 95-600, §702(n)(2), inserted provisions relating to powers of independent trustees and definition of a related or subordinate trustee.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(n)(5) of Pub. L. 95-600, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, section 2602 of this title, and provisions set out as a note under section 2601 of this title] shall take effect as if included in chapter 13 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 2006 of the Tax Reform Act of 1976 [Pub. L. 94-455, title XX, §2006, Oct. 4, 1976, 90 Stat. 1879].

“(B) The amendment made by paragraph (1) [amending provisions set out as a note under section 2601 of this title] shall take effect on October 4, 1976.”

### [§ 2614. Omitted]

#### CODIFICATION

Section, added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1887; amended Pub. L. 95-600, title VII, §702(c)(1)(B), Nov. 6, 1978, 92 Stat. 2926; Pub. L. 96-223, title IV, §401(c)(3), Apr. 2, 1980, 94 Stat. 300, related to special rules for generation-skipping transfers, prior to the general revision of this chapter by Pub. L. 99-514, §1431(a).



**Subchapter C—Taxable Amount**

Sec.	
2621.	Taxable amount in case of taxable distribution.
2622.	Taxable amount in case of taxable termination.
2623.	Taxable amount in case of direct skip.
2624.	Valuation.

**AMENDMENTS**

1986—Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720, substituted “Taxable Amount” for “Administration” in subchapter heading, substituted “Taxable amount in case of taxable distribution” for “Administration” in item 2621 and “Taxable amount in case of taxable termination” for “Regulations” in item 2622, and added items 2623 and 2624.

**§ 2621. Taxable amount in case of taxable distribution****(a) In general**

For purposes of this chapter, the taxable amount in the case of any taxable distribution shall be—

(1) the value of the property received by the transferee, reduced by

(2) any expense incurred by the transferee in connection with the determination, collection, or refund of the tax imposed by this chapter with respect to such distribution.

**(b) Payment of GST tax treated as taxable distribution**

For purposes of this chapter, if any of the tax imposed by this chapter with respect to any taxable distribution is paid out of the trust, an amount equal to the portion so paid shall be treated as a taxable distribution.

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1887; amended Pub. L. 97-34, title IV, §422(e)(4), Aug. 13, 1981, 95 Stat. 316; Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720.)

**AMENDMENTS**

1986—Pub. L. 99-514 amended section generally, substituting provisions relating to taxable amount in case of a taxable distribution for former provisions which related generally to administration of this chapter. See section 2661 of this title.

1981—Subsec. (b). Pub. L. 97-34 substituted “Section 6166” for “Sections 6166 and 6166A” in heading and “section 6166 (relating to extension of time)” for “sections 6166 and 6166A (relating to extensions of time)” in text.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**EFFECTIVE DATE OF 1981 AMENDMENT**

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97-34, set out as a note under section 6166 of this title.

**§ 2622. Taxable amount in case of taxable termination****(a) In general**

For purposes of this chapter, the taxable amount in the case of a taxable termination shall be—

(1) the value of all property with respect to which the taxable termination has occurred, reduced by

(2) any deduction allowed under subsection (b).

**(b) Deduction for certain expenses**

For purposes of subsection (a), there shall be allowed a deduction similar to the deduction allowed by section 2053 (relating to expenses, indebtedness, and taxes) for amounts attributable to the property with respect to which the taxable termination has occurred.

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1888; amended Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720.)

**AMENDMENTS**

1986—Pub. L. 99-514 amended section generally, substituting provisions relating to taxable amount in case of a taxable termination for former provisions which authorized the Secretary to promulgate regulations. See section 2663 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2623. Taxable amount in case of direct skip**

For purposes of this chapter, the taxable amount in the case of a direct skip shall be the value of the property received by the transferee.

(Added Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2721.)

**EFFECTIVE DATE**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2624. Valuation****(a) General rule**

Except as otherwise provided in this chapter, property shall be valued as of the time of the generation-skipping transfer.

**(b) Alternate valuation and special use valuation elections apply to certain direct skips**

In the case of any direct skip of property which is included in the transferor's gross estate, the value of such property for purposes of this chapter shall be the same as its value for purposes of chapter 11 (determined with regard to sections 2032 and 2032A).

**(c) Alternate valuation election permitted in the case of taxable terminations occurring at death**

If 1 or more taxable terminations with respect to the same trust occur at the same time as and as a result of the death of an individual, an election may be made to value all of the property included in such terminations in accordance with section 2032.

**(d) Reduction for consideration provided by transferee**

For purposes of this chapter, the value of the property transferred shall be reduced by the

amount of any consideration provided by the transferee.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2721.)

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

### Subchapter D—GST Exemption

Sec.	
2631.	GST exemption.
2632.	Special rules for allocation of GST exemption.

#### § 2631. GST exemption

##### (a) General rule

For purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

##### (b) Allocations irrevocable

Any allocation under subsection (a), once made, shall be irrevocable.

##### (c) GST exemption amount

For purposes of subsection (a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under section 2010(c) for such calendar year.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2721; amended Pub. L. 105-34, title V, § 501(d), Aug. 5, 1997, 111 Stat. 846; Pub. L. 105-206, title VI, § 6007(a)(1), July 22, 1998, 112 Stat. 806; Pub. L. 107-16, title V, § 521(c), June 7, 2001, 115 Stat. 72.)

#### AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

#### AMENDMENTS

2001—Subsec. (a). Pub. L. 107-16, §§ 521(c)(1), 901, temporarily substituted “amount” for “of \$1,000,000”. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c). Pub. L. 107-16, §§ 521(c)(2), 901, temporarily amended heading and text of subsec. (c) generally, substituting provisions relating to the GST exemption amount for any calendar year for provisions which related to inflation adjustment of the \$1,000,000 amount contained in subsec. (a) in the case of any calendar year after 1998 and applicability of any increase for any such calendar year. See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (c). Pub. L. 105-206 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “In the case of an individual who dies in any calendar year after 1998, the \$1,000,000 amount contained in subsection (a) shall be increased by an amount equal to—

“(1) \$1,000,000, multiplied by

“(2) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 1997’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the next lowest multiple of \$10,000.”

1997—Subsec. (c). Pub. L. 105-34 added subsec. (c).

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2003, see section 521(e)(3) of Pub. L. 107-16, set out as a note under section 2010 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

#### § 2632. Special rules for allocation of GST exemption

##### (a) Time and manner of allocation

###### (1) Time

Any allocation by an individual of his GST exemption under section 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

###### (2) Manner

The Secretary shall prescribe by forms or regulations the manner in which any allocation referred to in paragraph (1) is to be made.

##### (b) Deemed allocation to certain lifetime direct skips

###### (1) In general

If any individual makes a direct skip during his lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the direct skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

###### (2) Unused portion

For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been allocated by such individual (or treated as allocated under paragraph (1) or subsection (c)(1)).

###### (3) Subsection not to apply in certain cases

An individual may elect to have this subsection not apply to a transfer.

**(c) Deemed allocation to certain lifetime transfers to GST trusts****(1) In general**

If any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

**(2) Unused portion**

For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been—

- (A) allocated by such individual,
- (B) treated as allocated under subsection (b) with respect to a direct skip occurring during or before the calendar year in which the indirect skip is made, or
- (C) treated as allocated under paragraph (1) with respect to a prior indirect skip.

**(3) Definitions****(A) Indirect skip**

For purposes of this subsection, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust.

**(B) GST trust**

The term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless—

- (i) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons—

- (I) before the date that the individual attains age 46,

- (II) on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or

- (III) upon the occurrence of an event that, in accordance with regulations prescribed by the Secretary, may reasonably be expected to occur before the date that such individual attains age 46,

- (ii) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals,

- (iii) the trust instrument provides that, if one or more individuals who are non-skip persons die on or before a date or event described in clause (i) or (ii), more than 25 percent of the trust corpus either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appoint-

ment exercisable by one or more of such individuals,

- (iv) the trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer,

- (v) the trust is a charitable lead annuity trust (within the meaning of section 2642(e)(3)(A)) or a charitable remainder annuity trust or a charitable remainder unitrust (within the meaning of section 664(d)), or

- (vi) the trust is a trust with respect to which a deduction was allowed under section 2522 for the amount of an interest in the form of the right to receive annual payments of a fixed percentage of the net fair market value of the trust property (determined yearly) and which is required to pay principal to a non-skip person if such person is alive when the yearly payments for which the deduction was allowed terminate.

For purposes of this subparagraph, the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in section 2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

**(4) Automatic allocations to certain GST trusts**

For purposes of this subsection, an indirect skip to which section 2642(f) applies shall be deemed to have been made only at the close of the estate tax inclusion period. The fair market value of such transfer shall be the fair market value of the trust property at the close of the estate tax inclusion period.

**(5) Applicability and effect****(A) In general**

An individual—

- (i) may elect to have this subsection not apply to—

- (I) an indirect skip, or

- (II) any or all transfers made by such individual to a particular trust, and

- (ii) may elect to treat any trust as a GST trust for purposes of this subsection with respect to any or all transfers made by such individual to such trust.

**(B) Elections****(i) Elections with respect to indirect skips**

An election under subparagraph (A)(i)(I) shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to paragraph (4) or on such later date or dates as may be prescribed by the Secretary.

**(ii) Other elections**

An election under clause (i)(II) or (ii) of subparagraph (A) may be made on a timely

filed gift tax return for the calendar year for which the election is to become effective.

**(d) Retroactive allocations**

**(1) In general**

If—

(A) a non-skip person has an interest or a future interest in a trust to which any transfer has been made,

(B) such person—

(i) is a lineal descendant of a grandparent of the transferor or of a grandparent of the transferor's spouse or former spouse, and

(ii) is assigned to a generation below the generation assignment of the transferor, and

(C) such person predeceases the transferor,

then the transferor may make an allocation of any of such transferor's unused GST exemption to any previous transfer or transfers to the trust on a chronological basis.

**(2) Special rules**

If the allocation under paragraph (1) by the transferor is made on a gift tax return filed on or before the date prescribed by section 6075(b) for gifts made within the calendar year within which the non-skip person's death occurred—

(A) the value of such transfer or transfers for purposes of section 2642(a) shall be determined as if such allocation had been made on a timely filed gift tax return for each calendar year within which each transfer was made,

(B) such allocation shall be effective immediately before such death, and

(C) the amount of the transferor's unused GST exemption available to be allocated shall be determined immediately before such death.

**(3) Future interest**

For purposes of this subsection, a person has a future interest in a trust if the trust may permit income or corpus to be paid to such person on a date or dates in the future.

**(e) Allocation of unused GST exemption**

**(1) In general**

Any portion of an individual's GST exemption which has not been allocated within the time prescribed by subsection (a) shall be deemed to be allocated as follows—

(A) first, to property which is the subject of a direct skip occurring at such individual's death, and

(B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

**(2) Allocation within categories**

**(A) In general**

The allocation under paragraph (1) shall be made among the properties described in subparagraph (A) thereof and the trusts described in subparagraph (B) thereof, as the case may be, in proportion to the respective

amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

**(B) Nonexempt portion**

For purposes of subparagraph (A), the term "nonexempt portion" means the value (at the time of allocation) of the property or trust, multiplied by the inclusion ratio with respect to such property or trust.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2721; amended Pub. L. 100-647, title I, § 1014(g)(16), Nov. 10, 1988, 102 Stat. 3566; Pub. L. 107-16, title V, § 561(a), (b), June 7, 2001, 115 Stat. 86, 89.)

**AMENDMENT OF SECTION**

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

**AMENDMENTS**

2001—Subsec. (b)(2). Pub. L. 107-16, §§ 561(b), 901, temporarily substituted "or subsection (c)(1)" for "with respect to a prior direct skip". See Effective and Termination Dates of 2001 Amendment note below.

Subsecs. (c) to (e). Pub. L. 107-16, §§ 561(a), 901, temporarily added subsecs. (c) and (d) and redesignated former subsec. (c) as (e). See Effective and Termination Dates of 2001 Amendment note below.

1988—Subsec. (b)(2). Pub. L. 100-647 substituted "paragraph (1) with respect to a prior direct skip" for "paragraph (1) with respect to a prior direct skip".

**EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT**

Pub. L. 107-16, title V, § 561(c), June 7, 2001, 115 Stat. 89, provided that:

"(1) **DEEMED ALLOCATION.**—Section 2632(c) of the Internal Revenue Code of 1986 (as added by subsection (a)), and the amendment made by subsection (b) [amending this section], shall apply to transfers subject to chapter 11 or 12 made after December 31, 2000, and to estate tax inclusion periods ending after December 31, 2000.

"(2) **RETROACTIVE ALLOCATIONS.**—Section 2632(d) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to deaths of non-skip persons occurring after December 31, 2000."

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**Subchapter E—Applicable Rate; Inclusion Ratio**

Sec.	
2641.	Applicable rate.
2642.	Inclusion ratio.

**§ 2641. Applicable rate****(a) General rule**

For purposes of this chapter, the term “applicable rate” means, with respect to any generation-skipping transfer, the product of—

- (1) the maximum Federal estate tax rate, and
- (2) the inclusion ratio with respect to the transfer.

**(b) Maximum Federal estate tax rate**

For purposes of subsection (a), the term “maximum Federal estate tax rate” means the maximum rate imposed by section 2001 on the estates of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2722.)

**EFFECTIVE DATE**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2642. Inclusion ratio****(a) Inclusion ratio defined**

For purposes of this chapter—

**(1) In general**

Except as otherwise provided in this section, the inclusion ratio with respect to any property transferred in a generation-skipping transfer shall be the excess (if any) of 1 over—

- (A) except as provided in subparagraph (B), the applicable fraction determined for the trust from which such transfer is made, or
- (B) in the case of a direct skip, the applicable fraction determined for such skip.

**(2) Applicable fraction**

For purposes of paragraph (1), the applicable fraction is a fraction—

- (A) the numerator of which is the amount of the GST exemption allocated to the trust (or in the case of a direct skip, allocated to the property transferred in such skip), and
- (B) the denominator of which is—

- (i) the value of the property transferred to the trust (or involved in the direct skip), reduced by
- (ii) the sum of—

- (I) any Federal estate tax or State death tax actually recovered from the trust attributable to such property, and
- (II) any charitable deduction allowed under section 2055 or 2522 with respect to such property.

**(3) Severing of trusts****(A) In general**

If a trust is severed in a qualified severance, the trusts resulting from such severance shall be treated as separate trusts thereafter for purposes of this chapter.

**(B) Qualified severance**

For purposes of subparagraph (A)—

**(i) In general**

The term “qualified severance” means the division of a single trust and the cre-

ation (by any means available under the governing instrument or under local law) of two or more trusts if—

- (I) the single trust was divided on a fractional basis, and
- (II) the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust.

**(ii) Trusts with inclusion ratio greater than zero**

If a trust has an inclusion ratio of greater than zero and less than 1, a severance is a qualified severance only if the single trust is divided into two trusts, one of which receives a fractional share of the total value of all trust assets equal to the applicable fraction of the single trust immediately before the severance. In such case, the trust receiving such fractional share shall have an inclusion ratio of zero and the other trust shall have an inclusion ratio of 1.

**(iii) Regulations**

The term “qualified severance” includes any other severance permitted under regulations prescribed by the Secretary.

**(C) Timing and manner of severances**

A severance pursuant to this paragraph may be made at any time. The Secretary shall prescribe by forms or regulations the manner in which the qualified severance shall be reported to the Secretary.

**(b) Valuation rules, etc.**

Except as provided in subsection (f)—

**(1) Gifts for which gift tax return filed or deemed allocation made**

If the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by section 6075(b) for such transfer or is deemed to be made under section 2632(b)(1) or (c)(1)—

- (A) the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and
- (B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

**(2) Transfers and allocations at or after death****(A) Transfers at death**

If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned.

**(B) Allocations to property transferred at death of transferor**

Any allocation to property transferred as a result of the death of the transferor shall be effective on and after the date of the death of the transferor.

**(3) Allocations to inter vivos transfers not made on timely filed gift tax return**

If any allocation of the GST exemption to any property not transferred as a result of the death of the transferor is not made on a gift tax return filed on or before the date prescribed by section 6075(b) and is not deemed to be made under section 2632(b)(1)—

(A) the value of such property for purposes of subsection (a) shall be determined as of the time such allocation is filed with the Secretary, and

(B) such allocation shall be effective on and after the date on which such allocation is filed with the Secretary.

**(4) QTIP trusts**

If the value of property is included in the estate of a spouse by virtue of section 2044, and if such spouse is treated as the transferor of such property under section 2652(a), the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11 in the estate of such spouse.

**(c) Treatment of certain direct skips which are nontaxable gifts****(1) In general**

In the case of a direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

**(2) Exception for certain transfers in trust**

Paragraph (1) shall not apply to any transfer to a trust for the benefit of an individual unless—

(A) during the life of such individual, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such individual, and

(B) if the trust does not terminate before the individual dies, the assets of such trust will be includible in the gross estate of such individual.

Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A).

**(3) Nontaxable gift**

For purposes of this subsection, the term “nontaxable gift” means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

(A) section 2503(b) (taking into account the application of section 2513), or

(B) section 2503(e).

**(d) Special rules where more than 1 transfer made to trust****(1) In general**

If a transfer of property is made to a trust in existence before such transfer, the applicable fraction for such trust shall be recomputed as of the time of such transfer in the manner provided in paragraph (2).

**(2) Applicable fraction**

In the case of any such transfer, the recomputed applicable fraction is a fraction—

(A) the numerator of which is the sum of—  
(i) the amount of the GST exemption allocated to property involved in such transfer, plus

(ii) the nontax portion of such trust immediately before such transfer, and

(B) the denominator of which is the sum of—

(i) the value of the property involved in such transfer reduced by the sum of—

(I) any Federal estate tax or State death tax actually recovered from the trust attributable to such property, and

(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property, and

(ii) the value of all of the property in the trust (immediately before such transfer).

**(3) Nontax portion**

For purposes of paragraph (2), the term “nontax portion” means the product of—

(A) the value of all of the property in the trust, and

(B) the applicable fraction in effect for such trust.

**(4) Similar recomputation in case of certain late allocations**

If—

(A) any allocation of the GST exemption to property transferred to a trust is not made on a timely filed gift tax return required by section 6019, and

(B) there was a previous allocation with respect to property transferred to such trust,

the applicable fraction for such trust shall be recomputed as of the time of such allocation under rules similar to the rules of paragraph (2).

**(e) Special rules for charitable lead annuity trusts****(1) In general**

For purposes of determining the inclusion ratio for any charitable lead annuity trust, the applicable fraction shall be a fraction—

(A) the numerator of which is the adjusted GST exemption, and

(B) the denominator of which is the value of all of the property in such trust immediately after the termination of the charitable lead annuity.

**(2) Adjusted GST exemption**

For purposes of paragraph (1), the adjusted GST exemption is an amount equal to the GST exemption allocated to the trust increased by interest determined—

(A) at the interest rate used in determining the amount of the deduction under section 2055 or 2522 (as the case may be) for the charitable lead annuity, and

(B) for the actual period of the charitable lead annuity.

**(3) Definitions**

For purposes of this subsection—

**(A) Charitable lead annuity trust**

The term “charitable lead annuity trust” means any trust in which there is a charitable lead annuity.

**(B) Charitable lead annuity**

The term “charitable lead annuity” means any interest in the form of a guaranteed annuity with respect to which a deduction was allowed under section 2055 or 2522 (as the case may be).

**(4) Coordination with subsection (d)**

Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection.

**(f) Special rules for certain inter vivos transfers**

Except as provided in regulations—

**(1) In general**

For purposes of determining the inclusion ratio, if—

(A) an individual makes an inter vivos transfer of property, and

(B) the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of section 2035),

any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under paragraph (2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the estate tax inclusion period.

**(2) Valuation**

In the case of any property to which paragraph (1) applies, the value of such property shall be—

(A) if such property is includible in the gross estate of the transferor (other than by reason of section 2035), its value for purposes of chapter 11, or

(B) if subparagraph (A) does not apply, its value as of the close of the estate tax inclusion period (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

**(3) Estate tax inclusion period**

For purposes of this subsection, the term “estate tax inclusion period” means any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of—

(A) the date on which there is a generation-skipping transfer with respect to such property, or

(B) the date of the death of the transferor.

**(4) Treatment of spouse**

Except as provided in regulations, any reference in this subsection to an individual or transferor shall be treated as including a reference to the spouse of such individual or transferor.

**(5) Coordination with subsection (d)**

Under regulations, appropriate adjustments shall be made in the application of subsection

(d) to take into account the provisions of this subsection.

**(g) Relief provisions****(1) Relief from late elections****(A) In general**

The Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make—

(i) an allocation of GST exemption described in paragraph (1) or (2) of subsection (b), and

(ii) an election under subsection (b)(3) or (c)(5) of section 2632.

Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

**(B) Basis for determinations**

In determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

**(2) Substantial compliance**

An allocation of GST exemption under section 2632 that demonstrates an intent to have the lowest possible inclusion ratio with respect to a transfer or a trust shall be deemed to be an allocation of so much of the transferor's unused GST exemption as produces the lowest possible inclusion ratio. In determining whether there has been substantial compliance, all relevant circumstances shall be taken into account, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2722; amended Pub. L. 100-647, title I, § 1014(g)(3)(A), (4), (17)(A), (B), (18), Nov. 10, 1988, 102 Stat. 3563, 3566, 3567; Pub. L. 101-239, title VII, § 7811(j)(4), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 101-508, title XI, §§ 11703(c)(1), (2), 11704(a)(17), (36), Nov. 5, 1990, 104 Stat. 1388-517, 1388-519; Pub. L. 107-16, title V, §§ 562(a), 563(a), (b), 564(a), June 7, 2001, 115 Stat. 89-91.)

**AMENDMENT OF SECTION**

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

**AMENDMENTS**

2001—Subsec. (a)(3). Pub. L. 107-16, §§ 562(a), 901, temporarily added par. (3). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(1). Pub. L. 107-16, §§ 563(a), 901, temporarily reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: “If the allocation of the GST exemption to any property is made on a gift tax return filed

on or before the date prescribed by section 6075(b) or is deemed to be made under section 2632(b)(1)—

“(A) the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 12, and

“(B) such allocation shall be effective on and after the date of such transfer.”

See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2)(A). Pub. L. 107-16, §§563(b), 901, temporarily reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: “If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned.” See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (g). Pub. L. 107-16, §§564(a), 901, temporarily added subsec. (g). See Effective and Termination Dates of 2001 Amendment note below.

1990—Subsec. (b)(3). Pub. L. 101-508, §11704(a)(36), amended Pub. L. 100-647, §1014(g)(4)(F)(ii). See 1988 Amendment note below.

Subsec. (c)(2). Pub. L. 101-508, §11703(c)(2), inserted at end: “Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A).”

Subsec. (c)(2)(B). Pub. L. 101-508, §11703(c)(1), substituted “the trust does not terminate before the individual dies” for “such individual dies before the trust is terminated”.

Subsec. (d)(2)(B)(i)(I). Pub. L. 101-508, §11704(a)(17), substituted “State” for “state”.

1989—Subsec. (b)(1), (3). Pub. L. 101-239 substituted “a gift tax return filed on or before the date prescribed by section 6075(b)” for “a timely filed gift tax return required by section 6019” in introductory provisions.

1988—Subsec. (a)(2). Pub. L. 100-647, §1014(g)(4)(B), struck out at end “Except as provided in paragraphs (3) and (4) of subsection (b), the value determined under subparagraph (B)(i) shall be of the property as of the time of the transfer to the trust (or the direct skip).”

Subsec. (b). Pub. L. 100-647, §1014(g)(4)(D), inserted “Except as provided in subsection (f)—” as introductory provision.

Subsec. (b)(2)(A). Pub. L. 100-647, §1014(g)(4)(C), inserted before period at end “; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned.”

Subsec. (b)(2)(B). Pub. L. 100-647, §1014(g)(4)(E), substituted “to property transferred at death” for “at or after death” in heading and “to property transferred as a result of the death of the transferor” for “at or after the death of the transferor” in text.

Subsec. (b)(3). Pub. L. 100-647, §1014(g)(4)(F)(ii), as amended by Pub. L. 101-508, §11704(a)(36), substituted “Allocations to inter vivos transfers” for “Inter vivos allocations” in heading.

Pub. L. 100-647, §1014(g)(4)(F)(i), substituted “to any property not transferred as a result of the death of the transferor is” for “to any property is made during the life of the transferor but is”.

Subsec. (c). Pub. L. 100-647, §1014(g)(17)(A), inserted “direct skips which are” in heading and amended text generally. Prior to amendment, text read as follows:

“(1) DIRECT SKIPS.—In the case of any direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

“(2) TREATMENT OF NONTAXABLE GIFTS MADE TO TRUSTS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), any nontaxable gift which is not a direct skip and which is made to a trust shall not be taken into account under subsection (a)(2)(B).

“(B) DETERMINATION OF 1ST TRANSFER TO TRUST.—In the case of any nontaxable gift referred to in subpara-

graph (A) which is the 1st transfer to the trust, the inclusion ratio for such trust shall be zero.

“(3) NONTAXABLE GIFT.—For purposes of this section, the term ‘nontaxable gift’ means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

“(A) section 2503(b) (taking into account the application of section 2513), or

“(B) section 2503(e).”

Subsec. (d)(1). Pub. L. 100-647, §1014(g)(17)(B), struck out “(other than a nontaxable gift)” after “transfer of property”.

Subsec. (d)(2)(B)(i). Pub. L. 100-647, §1014(g)(18), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “the value of the property involved in such transfer, reduced by any charitable deduction allowed under section 2055 or 2522 with respect to such property, and”.

Subsec. (e). Pub. L. 100-647, §1014(g)(3)(A), added subsec. (e).

Subsec. (f). Pub. L. 100-647, §1014(g)(4)(A), added subsec. (f).

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title V, §562(b), June 7, 2001, 115 Stat. 90, provided that: “The amendment made by this section [amending this section] shall apply to severances after December 31, 2000.”

Pub. L. 107-16, title V, §563(c), June 7, 2001, 115 Stat. 91, provided that: “The amendments made by this section [amending this section] shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000.”

Pub. L. 107-16, title V, §564(b), June 7, 2001, 115 Stat. 91, provided that:

“(1) RELIEF FROM LATE ELECTIONS.—Section 2642(g)(1) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to requests pending on, or filed after, December 31, 2000.

“(2) SUBSTANTIAL COMPLIANCE.—Section 2642(g)(2) of such Code (as so added) shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000. No implication is intended with respect to the availability of relief from late elections or the application of a rule of substantial compliance on or before such date.”

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 11703(c)(4) of Pub. L. 101-508 provided that: “The amendments made by paragraphs (1) and (2) [amending this section] shall apply to transfers after March 31, 1988.”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 1014(g)(3)(B) of Pub. L. 100-647 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply for purposes of determining the inclusion ratio with respect to property transferred after October 13, 1987.”

Section 1014(g)(17)(C) of Pub. L. 100-647 provided that: “The amendments made by this paragraph [amending this section] shall apply to transfers after March 31, 1988.”



Amendment by section 1014(g)(4), (18) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**Subchapter F—Other Definitions and Special Rules**

Sec.	
2651.	Generation assignment.
2652.	Other definitions.
2653.	Taxation of multiple skips.
2654.	Special rules.

**§ 2651. Generation assignment**

**(a) In general**

For purposes of this chapter, the generation to which any person (other than the transferor) belongs shall be determined in accordance with the rules set forth in this section.

**(b) Lineal descendants**

**(1) In general**

An individual who is a lineal descendant of a grandparent of the transferor shall be assigned to that generation which results from comparing the number of generations between the grandparent and such individual with the number of generations between the grandparent and the transferor.

**(2) On spouse's side**

An individual who is a lineal descendant of a grandparent of a spouse (or former spouse) of the transferor (other than such spouse) shall be assigned to that generation which results from comparing the number of generations between such grandparent and such individual with the number of generations between such grandparent and such spouse.

**(3) Treatment of legal adoptions, etc.**

For purposes of this subsection—

**(A) Legal adoptions**

A relationship by legal adoption shall be treated as a relationship by blood.

**(B) Relationships by half-blood**

A relationship by the half-blood shall be treated as a relationship of the whole-blood.

**(c) Marital relationship**

**(1) Marriage to transferor**

An individual who has been married at any time to the transferor shall be assigned to the transferor's generation.

**(2) Marriage to other lineal descendants**

An individual who has been married at any time to an individual described in subsection (b) shall be assigned to the generation of the individual so described.

**(d) Persons who are not lineal descendants**

An individual who is not assigned to a generation by reason of the foregoing provisions of this

section shall be assigned to a generation on the basis of the date of such individual's birth with—

(1) an individual born not more than 12½ years after the date of the birth of the transferor assigned to the transferor's generation,

(2) an individual born more than 12½ years but not more than 37½ years after the date of the birth of the transferor assigned to the first generation younger than the transferor, and

(3) similar rules for a new generation every 25 years.

**(e) Special rule for persons with a deceased parent**

**(1) In general**

For purposes of determining whether any transfer is a generation-skipping transfer, if—

(A) an individual is a descendant of a parent of the transferor (or the transferor's spouse or former spouse), and

(B) such individual's parent who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse) is dead at the time the transfer (from which an interest of such individual is established or derived) is subject to a tax imposed by chapter 11 or 12 upon the transferor (and if there shall be more than 1 such time, then at the earliest such time),

such individual shall be treated as if such individual were a member of the generation which is 1 generation below the lower of the transferor's generation or the generation assignment of the youngest living ancestor of such individual who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse), and the generation assignment of any descendant of such individual shall be adjusted accordingly.

**(2) Limited application of subsection to collateral heirs**

This subsection shall not apply with respect to a transfer to any individual who is not a lineal descendant of the transferor (or the transferor's spouse or former spouse) if, at the time of the transfer, such transferor has any living lineal descendant.

**(f) Other special rules**

**(1) Individuals assigned to more than 1 generation**

Except as provided in regulations, an individual who, but for this subsection, would be assigned to more than 1 generation shall be assigned to the youngest such generation.

**(2) Interests through entities**

Except as provided in paragraph (3), if an estate, trust, partnership, corporation, or other entity has an interest in property, each individual having a beneficial interest in such entity shall be treated as having an interest in such property and shall be assigned to a generation under the foregoing provisions of this subsection.

**(3) Treatment of certain charitable organizations and governmental entities**

Any—

(A) organization described in section 511(a)(2),

- (B) charitable trust described in section 511(b)(2), and
- (C) governmental entity,

shall be assigned to the transferor's generation.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2725; amended Pub. L. 100-647, title I, § 1014(g)(11), (19), Nov. 10, 1988, 102 Stat. 3565, 3567; Pub. L. 105-34, title V, § 511(a), Aug. 5, 1997, 111 Stat. 860.)

#### AMENDMENTS

1997—Subsecs. (e), (f). Pub. L. 105-34 added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(2). Pub. L. 100-647, § 1014(g)(19), inserted "(or former spouse)" after "a spouse".

Subsec. (e)(3). Pub. L. 100-647, § 1014(g)(11), amended par. (3) generally, including governmental entities among the organizations to be assigned to transferor's generation.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to terminations, distributions, and transfers occurring after Dec. 31, 1997, see section 511(c) of Pub. L. 105-34, set out as a note under section 2612 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

### § 2652. Other definitions

#### (a) Transferor

For purposes of this chapter—

##### (1) In general

Except as provided in this subsection or section 2653(a), the term "transferor" means—

- (A) in the case of any property subject to the tax imposed by chapter 11, the decedent, and
- (B) in the case of any property subject to the tax imposed by chapter 12, the donor.

An individual shall be treated as transferring any property with respect to which such individual is the transferor.

##### (2) Gift-splitting by married couples

If, under section 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of this chapter.

##### (3) Special election for qualified terminable interest property

In the case of—

- (A) any trust with respect to which a deduction is allowed to the decedent under section 2056 by reason of subsection (b)(7) thereof, and
- (B) any trust with respect to which a deduction to the donor spouse is allowed under

section 2523 by reason of subsection (f) thereof,

the estate of the decedent or the donor spouse, as the case may be, may elect to treat all of the property in such trust for purposes of this chapter as if the election to be treated as qualified terminable interest property had not been made.

#### (b) Trust and trustee

##### (1) Trust

The term "trust" includes any arrangement (other than an estate) which, although not a trust, has substantially the same effect as a trust.

##### (2) Trustee

In the case of an arrangement which is not a trust but which is treated as a trust under this subsection, the term "trustee" shall mean the person in actual or constructive possession of the property subject to such arrangement.

##### (3) Examples

Arrangements to which this subsection applies include arrangements involving life estates and remainders, estates for years, and insurance and annuity contracts.

#### (c) Interest

##### (1) In general

A person has an interest in property held in trust if (at the time the determination is made) such person—

- (A) has a right (other than a future right) to receive income or corpus from the trust,
- (B) is a permissible current recipient of income or corpus from the trust and is not described in section 2055(a), or
- (C) is described in section 2055(a) and the trust is—
  - (i) a charitable remainder annuity trust,
  - (ii) a charitable remainder unitrust within the meaning of section 664, or
  - (iii) a pooled income fund within the meaning of section 642(c)(5).

##### (2) Certain interests disregarded

For purposes of paragraph (1), an interest which is used primarily to postpone or avoid any tax imposed by this chapter shall be disregarded.

##### (3) Certain support obligations disregarded

The fact that income or corpus of the trust may be used to satisfy an obligation of support arising under State law shall be disregarded in determining whether a person has an interest in the trust, if—

- (A) such use is discretionary, or
- (B) such use is pursuant to the provisions of any State law substantially equivalent to the Uniform Gifts to Minors Act.

#### (d) Executor

For purposes of this chapter, the term "executor" has the meaning given such term by section 2203.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2726; amended Pub. L. 100-647, title I, § 1014(g)(6), (8), (9), (14), (20), Nov. 10, 1988, 102 Stat. 3565-3567; Pub. L. 105-34, title XIII, § 1305(b),

Aug. 5, 1997, 111 Stat. 1040; Pub. L. 105-206, title VI, § 6013(a)(3), (4)(A), July 22, 1998, 112 Stat. 819.)

#### AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-206, § 6013(a)(4)(A), struck out at end “Such term shall not include any trust during any period the trust is treated as part of an estate under section 645.”

Pub. L. 105-206, § 6013(a)(3), substituted “section 645” for “section 646”.

1997—Subsec. (b)(1). Pub. L. 105-34 inserted at end “Such term shall not include any trust during any period the trust is treated as part of an estate under section 646.”

1988—Subsec. (a)(1). Pub. L. 100-647, § 1014(g)(9), substituted “any property” for “a transfer of a kind” in subpars. (A) and (B) and inserted at end “An individual shall be treated as transferring any property with respect to which such individual is the transferor.”

Subsec. (a)(3). Pub. L. 100-647, § 1014(g)(14), substituted “any trust” for “any property” in subpars. (A) and (B) and “may elect to treat all of the property in such trust” for “may elect to treat such property” in closing provisions.

Subsec. (c)(2). Pub. L. 100-647, § 1014(g)(8), struck out “nominal” before “interests” in heading and substituted “any tax” for “the tax” in text.

Subsec. (c)(3). Pub. L. 100-647, § 1014(g)(6), added par. (3).

Subsec. (d). Pub. L. 100-647, § 1014(g)(20), added subsec. (d).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable with respect to estates of decedents dying after Aug. 5, 1997, see section 1305(d) of Pub. L. 105-34, set out as an Effective Date note under section 645 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

### § 2653. Taxation of multiple skips

#### (a) General rule

For purposes of this chapter, if—

(1) there is a generation-skipping transfer of any property, and

(2) immediately after such transfer such property is held in trust,

for purposes of applying this chapter (other than section 2651) to subsequent transfers from the portion of such trust attributable to such property, the trust will be treated as if the transferor of such property were assigned to the first generation above the highest generation of any person who has an interest in such trust immediately after the transfer.

### (b) Trust retains inclusion ratio

#### (1) In general

Except as provided in paragraph (2), the provisions of subsection (a) shall not affect the inclusion ratio determined with respect to any trust. Under regulations prescribed by the Secretary, notwithstanding the preceding sentence, proper adjustment shall be made to the inclusion ratio with respect to such trust to take into account any tax under this chapter borne by such trust which is imposed by this chapter on the transfer described in subsection (a).

#### (2) Special rule for pour-over trust

##### (A) In general

If the generation-skipping transfer referred to in subsection (a) involves the transfer of property from 1 trust to another trust (hereinafter in this paragraph referred to as the “pour-over trust”), the inclusion ratio for the pour-over trust shall be determined by treating the nontax portion of such distribution as if it were a part of a GST exemption allocated to such trust.

##### (B) Nontax portion

For purposes of subparagraph (A), the nontax portion of any distribution is the amount of such distribution multiplied by the applicable fraction which applies to such distribution.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2727.)

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

### § 2654. Special rules

#### (a) Basis adjustment

##### (1) In general

Except as provided in paragraph (2), if property is transferred in a generation-skipping transfer, the basis of such property shall be increased (but not above the fair market value of such property) by an amount equal to that portion of the tax imposed by section 2601 (computed without regard to section 2604) with respect to the transfer which is attributable to the excess of the fair market value of such property over its adjusted basis immediately before the transfer. The preceding shall be applied after any basis adjustment under section 1015 with respect to the transfer.

##### (2) Certain transfers at death

If property is transferred in a taxable termination which occurs at the same time as and as a result of the death of an individual, the basis of such property shall be adjusted in a manner similar to the manner provided under section 1014(a); except that, if the inclusion ratio with respect to such property is less than 1, any increase or decrease in basis shall be limited by multiplying such increase or decrease (as the case may be) by the inclusion ratio.

**(b) Certain trusts treated as separate trusts**

For purposes of this chapter—

(1) the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts, and

(2) substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.

Except as provided in the preceding sentence, nothing in this chapter shall be construed as authorizing a single trust to be treated as 2 or more trusts. For purposes of this subsection, a trust shall be treated as part of an estate during any period that the trust is so treated under section 645.

**(c) Disclaimers**

**For provisions relating to the effect of a qualified disclaimer for purposes of this chapter, see section 2518.**

**(d) Limitation on personal liability of trustee**

A trustee shall not be personally liable for any increase in the tax imposed by section 2601 which is attributable to the fact that—

(1) section 2642(c) (relating to exemption of certain nontaxable gifts) does not apply to a transfer to the trust which was made during the life of the transferor and for which a gift tax return was not filed, or

(2) the inclusion ratio with respect to the trust is greater than the amount of such ratio as computed on the basis of the return on which was made (or was deemed made) an allocation of the GST exemption to property transferred to such trust.

The preceding sentence shall not apply if the trustee has knowledge of facts sufficient reasonably to conclude that a gift tax return was required to be filed or that the inclusion ratio was erroneous.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2727; amended Pub. L. 100-647, title I, § 1014(g)(12), (13), Nov. 10, 1988, 102 Stat. 3565, 3566; Pub. L. 101-239, title VII, § 7811(j)(2), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 105-206, title VI, § 6013(a)(4)(B), July 22, 1998, 112 Stat. 819.)

**AMENDMENTS**

1998—Subsec. (b). Pub. L. 105-206 inserted at end “For purposes of this subsection, a trust shall be treated as part of an estate during any period that the trust is so treated under section 645.”

1989—Subsec. (a)(1). Pub. L. 101-239 inserted at end “The preceding shall be applied after any basis adjustment under section 1015 with respect to the transfer.”

1988—Subsec. (a)(2). Pub. L. 100-647, § 1014(g)(12), inserted “or decrease” after “any increase” and “or decrease (as the case may be)” after “such increase”.

Subsec. (b). Pub. L. 100-647, § 1014(g)(13), substituted “Certain trusts” for “Separate shares” in heading and amended text generally. Prior to amendment, text read as follows: “Substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.”

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates (see section 1305 of Pub. L. 105-34), see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1989 AMENDMENT**

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**Subchapter G—Administration**

Sec.

2661.

Administration.

2662.

Return requirements.

2663.

Regulations.

2664.

Termination.

**AMENDMENTS**

2001—Pub. L. 107-16, title V, § 501(c)(2), June 7, 2001, 115 Stat. 69, added item 2664.

**§ 2661. Administration**

Insofar as applicable and not inconsistent with the provisions of this chapter—

(1) except as provided in paragraph (2), all provisions of subtitle F (including penalties) applicable to the gift tax, to chapter 12, or to section 2501, are hereby made applicable in respect of the generation-skipping transfer tax, this chapter, or section 2601, as the case may be, and

(2) in the case of a generation-skipping transfer occurring at the same time as and as a result of the death of an individual, all provisions of subtitle F (including penalties) applicable to the estate tax, to chapter 11, or to section 2001 are hereby made applicable in respect of the generation-skipping transfer tax, this chapter, or section 2601 (as the case may be).

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2728.)

**EFFECTIVE DATE**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2662. Return requirements****(a) In general**

The Secretary shall prescribe by regulations the person who is required to make the return with respect to the tax imposed by this chapter and the time by which any such return must be filed. To the extent practicable, such regulations shall provide that—

(1) the person who is required to make such return shall be the person liable under section 2603(a) for payment of such tax, and

(2) the return shall be filed—

(A) in the case of a direct skip (other than from a trust), on or before the date on which an estate or gift tax return is required to be filed with respect to the transfer, and

(B) in all other cases, on or before the 15th day of the 4th month after the close of the taxable year of the person required to make such return in which such transfer occurs.

**(b) Information returns**

The Secretary may by regulations require a return to be filed containing such information as he determines to be necessary for purposes of this chapter.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2728.)

**EFFECTIVE DATE**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2663. Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter, including—

(1) such regulations as may be necessary to coordinate the provisions of this chapter with the recapture tax imposed under section 2032A(c),

(2) regulations (consistent with the principles of chapters 11 and 12) providing for the application of this chapter in the case of transferors who are nonresidents not citizens of the United States, and

(3) regulations providing for such adjustments as may be necessary to the application of this chapter in the case of any arrangement which, although not a trust, is treated as a trust under section 2652(b).

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2729; amended Pub. L. 100-647, title I, § 1014(g)(10), Nov. 10, 1988, 102 Stat. 3565.)

**AMENDMENTS**

1988—Par. (3). Pub. L. 100-647 added par. (3).

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2664. Termination**

This chapter shall not apply to generation-skipping transfers after December 31, 2009.

(Added Pub. L. 107-16, title V, § 501(b), June 7, 2001, 115 Stat. 69.)

**TERMINATION OF SECTION**

*For termination of section by section 901 of Pub. L. 107-16, see Effective and Termination Dates note below.*

**EFFECTIVE AND TERMINATION DATES**

Section applicable to the estates of decedents dying, and generation-skipping transfers, after December 31, 2009, see section 501(d) of Pub. L. 107-16, set out as a note under section 2210 of this title.

Section inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if it had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

**CHAPTER 14—SPECIAL VALUATION RULES**

**Sec.**

2701. Special valuation rules in case of transfers of certain interests in corporations or partnerships.

2702. Special valuation rules in case of transfers of interests in trusts.

2703. Certain rights and restrictions disregarded.

2704. Treatment of certain lapsing rights and restrictions.

**§ 2701. Special valuation rules in case of transfers of certain interests in corporations or partnerships**

**(a) Valuation rules**

**(1) In general**

Solely for purposes of determining whether a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any right—

(A) which is described in subparagraph (A) or (B) of subsection (b)(1), and

(B) which is with respect to any applicable retained interest that is held by the transferor or an applicable family member immediately after the transfer,

shall be determined under paragraph (3). This paragraph shall not apply to the transfer of any interest for which market quotations are readily available (as of the date of transfer) on an established securities market.

**(2) Exceptions for marketable retained interests, etc.**

Paragraph (1) shall not apply to any right with respect to an applicable retained interest if—

(A) market quotations are readily available (as of the date of the transfer) for such interest on an established securities market,

(B) such interest is of the same class as the transferred interest, or

(C) such interest is proportionally the same as the transferred interest, without regard to nonlapsing differences in voting power (or, for a partnership, nonlapsing differences with respect to management and limitations on liability).

Subparagraph (C) shall not apply to any interest in a partnership if the transferor or an applicable family member has the right to alter the liability of the transferee of the transferred property. Except as provided by the Secretary, any difference described in subparagraph (C) which lapses by reason of any Federal or State law shall be treated as a non-

lapsing difference for purposes of such subparagraph.

**(3) Valuation of rights to which paragraph (1) applies**

**(A) In general**

The value of any right described in paragraph (1), other than a distribution right which consists of a right to receive a qualified payment, shall be treated as being zero.

**(B) Valuation of certain qualified payments**

If—

(i) any applicable retained interest confers a distribution right which consists of the right to a qualified payment, and

(ii) there are 1 or more liquidation, put, call, or conversion rights with respect to such interest,

the value of all such rights shall be determined as if each liquidation, put, call, or conversion right were exercised in the manner resulting in the lowest value being determined for all such rights.

**(C) Valuation of qualified payments where no liquidation, etc. rights**

In the case of an applicable retained interest which is described in subparagraph (B)(i) but not subparagraph (B)(ii), the value of the distribution right shall be determined without regard to this section.

**(4) Minimum valuation of junior equity**

**(A) In general**

In the case of a transfer described in paragraph (1) of a junior equity interest in a corporation or partnership, such interest shall in no event be valued at an amount less than the value which would be determined if the total value of all of the junior equity interests in the entity were equal to 10 percent of the sum of—

(i) the total value of all of the equity interests in such entity, plus

(ii) the total amount of indebtedness of such entity to the transferor (or an applicable family member).

**(B) Definitions**

For purposes of this paragraph—

**(i) Junior equity interest**

The term “junior equity interest” means common stock or, in the case of a partnership, any partnership interest under which the rights as to income and capital (or, to the extent provided in regulations, the rights as to either income or capital) are junior to the rights of all other classes of equity interests.

**(ii) Equity interest**

The term “equity interest” means stock or any interest as a partner, as the case may be.

**(b) Applicable retained interests**

For purposes of this section—

**(1) In general**

The term “applicable retained interest” means any interest in an entity with respect to which there is—

(A) a distribution right, but only if, immediately before the transfer described in subsection (a)(1), the transferor and applicable family members hold (after application of subsection (e)(3)) control of the entity, or

(B) a liquidation, put, call, or conversion right.

**(2) Control**

For purposes of paragraph (1)—

**(A) Corporations**

In the case of a corporation, the term “control” means the holding of at least 50 percent (by vote or value) of the stock of the corporation.

**(B) Partnerships**

In the case of a partnership, the term “control” means—

(i) the holding of at least 50 percent of the capital or profits interests in the partnership, or

(ii) in the case of a limited partnership, the holding of any interest as a general partner.

**(C) Applicable family member**

For purposes of this subsection, the term “applicable family member” includes any lineal descendant of any parent of the transferor or the transferor’s spouse.

**(c) Distribution and other rights; qualified payments**

For purposes of this section—

**(1) Distribution right**

**(A) In general**

The term “distribution right” means—

(i) a right to distributions from a corporation with respect to its stock, and

(ii) a right to distributions from a partnership with respect to a partner’s interest in the partnership.

**(B) Exceptions**

The term “distribution right” does not include—

(i) a right to distributions with respect to any interest which is junior to the rights of the transferred interest,

(ii) any liquidation, put, call, or conversion right, or

(iii) any right to receive any guaranteed payment described in section 707(c) of a fixed amount.

**(2) Liquidation, etc. rights**

**(A) In general**

The term “liquidation, put, call, or conversion right” means any liquidation, put, call, or conversion right, or any similar right, the exercise or nonexercise of which affects the value of the transferred interest.

**(B) Exception for fixed rights**

**(i) In general**

The term “liquidation, put, call, or conversion right” does not include any right which must be exercised at a specific time and at a specific amount.

**(ii) Treatment of certain rights**

If a right is assumed to be exercised in a particular manner under subsection

(a)(3)(B), such right shall be treated as so exercised for purposes of clause (i).

**(C) Exception for certain rights to convert**

The term “liquidation, put, call, or conversion right” does not include any right which—

(i) is a right to convert into a fixed number (or a fixed percentage) of shares of the same class of stock in a corporation as the transferred stock in such corporation under subsection (a)(1) (or stock which would be of the same class but for non-lapsing differences in voting power),

(ii) is nonlapsing,

(iii) is subject to proportionate adjustments for splits, combinations, reclassifications, and similar changes in the capital stock, and

(iv) is subject to adjustments similar to the adjustments under subsection (d) for accumulated but unpaid distributions.

A rule similar to the rule of the preceding sentence shall apply for partnerships.

**(3) Qualified payment**

**(A) In general**

Except as otherwise provided in this paragraph, the term “qualified payment” means any dividend payable on a periodic basis under any cumulative preferred stock (or a comparable payment under any partnership interest) to the extent that such dividend (or comparable payment) is determined at a fixed rate.

**(B) Treatment of variable rate payments**

For purposes of subparagraph (A), a payment shall be treated as fixed as to rate if such payment is determined at a rate which bears a fixed relationship to a specified market interest rate.

**(C) Elections**

**(i) In general**

Payments under any interest held by a transferor which (without regard to this subparagraph) are qualified payments shall be treated as qualified payments unless the transferor elects not to treat such payments as qualified payments. Payments described in the preceding sentence which are held by an applicable family member shall be treated as qualified payments only if such member elects to treat such payments as qualified payments.

**(ii) Election to have interest treated as qualified payment**

A transferor or applicable family member holding any distribution right which (without regard to this subparagraph) is not a qualified payment may elect to treat such right as a qualified payment, to be paid in the amounts and at the times specified in such election. The preceding sentence shall apply only to the extent that the amounts and times so specified are not inconsistent with the underlying legal instrument giving rise to such right.

**(iii) Elections irrevocable**

Any election under this subparagraph with respect to an interest shall, once made, be irrevocable.

**(d) Transfer tax treatment of cumulative but unpaid distributions**

**(1) In general**

If a taxable event occurs with respect to any distribution right to which subsection (a)(3)(B) or (C) applied, the following shall be increased by the amount determined under paragraph (2):

(A) The taxable estate of the transferor in the case of a taxable event described in paragraph (3)(A)(i).

(B) The taxable gifts of the transferor for the calendar year in which the taxable event occurs in the case of a taxable event described in paragraph (3)(A)(ii) or (iii).

**(2) Amount of increase**

**(A) In general**

The amount of the increase determined under this paragraph shall be the excess (if any) of—

(i) the value of the qualified payments payable during the period beginning on the date of the transfer under subsection (a)(1) and ending on the date of the taxable event determined as if—

(I) all such payments were paid on the date payment was due, and

(II) all such payments were reinvested by the transferor as of the date of payment at a yield equal to the discount rate used in determining the value of the applicable retained interest described in subsection (a)(1), over

(ii) the value of such payments paid during such period computed under clause (i) on the basis of the time when such payments were actually paid.

**(B) Limitation on amount of increase**

**(i) In general**

The amount of the increase under subparagraph (A) shall not exceed the applicable percentage of the excess (if any) of—

(I) the value (determined as of the date of the taxable event) of all equity interests in the entity which are junior to the applicable retained interest, over

(II) the value of such interests (determined as of the date of the transfer to which subsection (a)(1) applied).

**(ii) Applicable percentage**

For purposes of clause (i), the applicable percentage is the percentage determined by dividing—

(I) the number of shares in the corporation held (as of the date of the taxable event) by the transferor which are applicable retained interests of the same class, by

(II) the total number of shares in such corporation (as of such date) which are of the same class as the class described in subclause (I).

A similar percentage shall be determined in the case of interests in a partnership.

**(iii) Definition**

For purposes of this subparagraph, the term “equity interest” has the meaning given such term by subsection (a)(4)(B).

**(C) Grace period**

For purposes of subparagraph (A), any payment of any distribution during the 4-year period beginning on its due date shall be treated as having been made on such due date.

**(3) Taxable events**

For purposes of this subsection—

**(A) In general**

The term “taxable event” means any of the following:

(i) The death of the transferor if the applicable retained interest conferring the distribution right is includible in the estate of the transferor.

(ii) The transfer of such applicable retained interest.

(iii) At the election of the taxpayer, the payment of any qualified payment after the period described in paragraph (2)(C), but only with respect to such payment.

**(B) Exception where spouse is transferee****(i) Deathtime transfers**

Subparagraph (A)(i) shall not apply to any interest includible in the gross estate of the transferor if a deduction with respect to such interest is allowable under section 2056 or 2106(a)(3).

**(ii) Lifetime transfers**

A transfer to the spouse of the transferor shall not be treated as a taxable event under subparagraph (A)(i) if such transfer does not result in a taxable gift by reason of—

(I) any deduction allowed under section 2523, or the exclusion under section 2503(b), or

(II) consideration for the transfer provided by the spouse.

**(iii) Spouse succeeds to treatment of transferor**

If an event is not treated as a taxable event by reason of this subparagraph, the transferee spouse or surviving spouse (as the case may be) shall be treated in the same manner as the transferor in applying this subsection with respect to the interest involved.

**(4) Special rules for applicable family members****(A) Family member treated in same manner as transferor**

For purposes of this subsection, an applicable family member shall be treated in the same manner as the transferor with respect to any distribution right retained by such family member to which subsection (a)(3)(B) or (C) applied.

**(B) Transfer to applicable family member**

In the case of a taxable event described in paragraph (3)(A)(ii) involving the transfer of an applicable retained interest to an applica-

ble family member (other than the spouse of the transferor), the applicable family member shall be treated in the same manner as the transferor in applying this subsection to distributions accumulating with respect to such interest after such taxable event.

**(C) Transfer to transferors**

In the case of a taxable event described in paragraph (3)(A)(ii) involving a transfer of an applicable retained interest from an applicable family member to a transferor, this subsection shall continue to apply to the transferor during any period the transferor holds such interest.

**(5) Transfer to include termination**

For purposes of this subsection, any termination of an interest shall be treated as a transfer.

**(e) Other definitions and rules**

For purposes of this section—

**(1) Member of the family**

The term “member of the family” means, with respect to any transferor—

(A) the transferor's spouse,

(B) a lineal descendant of the transferor or the transferor's spouse, and

(C) the spouse of any such descendant.

**(2) Applicable family member**

The term “applicable family member” means, with respect to any transferor—

(A) the transferor's spouse,

(B) an ancestor of the transferor or the transferor's spouse, and

(C) the spouse of any such ancestor.

**(3) Attribution of indirect holdings and transfers**

An individual shall be treated as holding any interest to the extent such interest is held indirectly by such individual through a corporation, partnership, trust, or other entity. If any individual is treated as holding any interest by reason of the preceding sentence, any transfer which results in such interest being treated as no longer held by such individual shall be treated as a transfer of such interest.

**(4) Effect of adoption**

A relationship by legal adoption shall be treated as a relationship by blood.

**(5) Certain changes treated as transfers**

Except as provided in regulations, a contribution to capital or a redemption, recapitalization, or other change in the capital structure of a corporation or partnership shall be treated as a transfer of an interest in such entity to which this section applies if the taxpayer or an applicable family member—

(A) receives an applicable retained interest in such entity pursuant to such transaction, or

(B) under regulations, otherwise holds, immediately after such transaction, an applicable retained interest in such entity.

This paragraph shall not apply to any transaction (other than a contribution to capital) if the interests in the entity held by the trans-



feror, applicable family members, and members of the transferor's family before and after the transaction are substantially identical.

#### (6) Adjustments

Under regulations prescribed by the Secretary, if there is any subsequent transfer, or inclusion in the gross estate, of any applicable retained interest which was valued under the rules of subsection (a), appropriate adjustments shall be made for purposes of chapter 11, 12, or 13 to reflect the increase in the amount of any prior taxable gift made by the transferor or decedent by reason of such valuation or to reflect the application of subsection (d).

#### (7) Treatment as separate interests

The Secretary may by regulation provide that any applicable retained interest shall be treated as 2 or more separate interests for purposes of this section.

(Added Pub. L. 101-508, title XI, §11602(a), Nov. 5, 1990, 104 Stat. 1388-491; amended Pub. L. 104-188, title I, §1702(f)(1)-(3)(B), (4)-(5)(B), (6)-(10), Aug. 20, 1996, 110 Stat. 1870-1872.)

#### AMENDMENTS

1996—Subsec. (a)(3)(B). Pub. L. 104-188, §1702(f)(1)(B), inserted “certain” before “qualified” in heading.

Subsec. (a)(3)(C). Pub. L. 104-188, §1702(f)(1)(A), added subpar. (C).

Subsec. (a)(4)(B)(i). Pub. L. 104-188, §1702(f)(2), inserted “(or, to the extent provided in regulations, the rights as to either income or capital)” after “income and capital”.

Subsec. (b)(2)(C). Pub. L. 104-188, §1702(f)(3)(A), added subpar. (C).

Subsec. (c)(1)(B)(i). Pub. L. 104-188, §1702(f)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “a right to distributions with respect to any junior equity interest (as defined in subsection (a)(4)(B)(i)).”

Subsec. (c)(3)(C)(i). Pub. L. 104-188, §1702(f)(5)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows:

“(i) WAIVER OF QUALIFIED PAYMENT TREATMENT.—A transferor or applicable family member may elect with respect to payments under any interest specified in such election to treat such payments as payments which are not qualified payments.”

Subsec. (c)(3)(C)(ii). Pub. L. 104-188, §1702(f)(5)(B), amended first sentence generally. Prior to amendment, first sentence read as follows: “A transferor or any applicable family member may elect to treat any distribution right as a qualified payment, to be paid in the amounts and at the times specified in such election.”

Subsec. (d)(1). Pub. L. 104-188, §1702(f)(1)(C), substituted “subsection (a)(3)(B) or (C)” for “subsection (a)(3)(B)”.

Subsec. (d)(3)(A)(iii). Pub. L. 104-188, §1702(f)(6), struck out “the period ending on the date of” after “with respect to”.

Subsec. (d)(3)(B)(ii)(I). Pub. L. 104-188, §1702(f)(7), inserted “or the exclusion under section 2503(b),” after “section 2523,”.

Subsec. (d)(4)(A). Pub. L. 104-188, §1702(f)(1)(C), substituted “subsection (a)(3)(B) or (C)” for “subsection (a)(3)(B)”.

Subsec. (d)(4)(C). Pub. L. 104-188, §1702(f)(9), added subpar. (C).

Subsec. (e)(3). Pub. L. 104-188, §1702(f)(3)(B), substituted “Attribution of indirect holdings and transfers” for “Attribution rules” in par. heading, struck out subpar. (A) designation and heading which read “Indirect holdings and transfers”, and struck out subpar. (B) which read as follows:

“(B) CONTROL.—For purposes of subsections (b)(1), an individual shall be treated as holding any interest held by the individual's brothers, sisters, or lineal descendants.”

Subsec. (e)(5)(A). Pub. L. 104-188, §1702(f)(8)(A), substituted “such transaction” for “such contribution to capital or such redemption, recapitalization, or other change”.

Subsec. (e)(5)(B). Pub. L. 104-188, §1702(f)(8)(B), substituted “such transaction” for “the transfer”.

Subsec. (e)(6). Pub. L. 104-188, §1702(f)(10), inserted “or to reflect the application of subsection (d)” before period at end.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

#### EFFECTIVE DATE

Section 11602(e)(1) of Pub. L. 101-508 provided that:

“(A) IN GENERAL.—The amendments made by subsection (a) [enacting this chapter]—

“(i) to the extent such amendments relate to sections 2701 and 2702 of the Internal Revenue Code of 1986 (as added by such amendments), shall apply to transfers after October 8, 1990,

“(ii) to the extent such amendments relate to section 2703 of such Code (as so added), shall apply to—

“(I) agreements, options, rights, or restrictions entered into or granted after October 8, 1990, and

“(II) agreements, options, rights, or restrictions which are substantially modified after October 8, 1990, and

“(iii) to the extent such amendments relate to section 2704 of such Code (as so added), shall apply to restrictions or rights (or limitations on rights) created after October 8, 1990.

“(B) EXCEPTION.—For purposes of subparagraph (A)(i), with respect to property transferred before October 9, 1990—

“(i) any failure to exercise a right of conversion,

“(ii) any failure to pay dividends, and

“(iii) any failure to exercise other rights specified in regulations, shall not be treated as a subsequent transfer.”

#### TIME FOR ELECTION UNDER SUBSECTION (c)(3)(C)(i)

Section 1702(f)(5)(C) of Pub. L. 104-188 provided that: “The time for making an election under the second sentence of section 2701(c)(3)(C)(i) of the Internal Revenue Code of 1986 (as amended by subparagraph (A)) shall not expire before the due date (including extensions) for filing the transferor's return of the tax imposed by section 2501 of such Code for the first calendar year ending after the date of enactment [probably means the date of enactment of Pub. L. 104-188, Oct. 20, 1996].”

#### STUDY OF METHODS USED TO DISTORT VALUATION OF PROPERTY FOR PURPOSES OF ESTATE AND GIFT TAX

Section 11602(d) of Pub. L. 101-508 provided that: “The Secretary of the Treasury shall conduct a study of—

“(1) the prevalence and types of options and agreements used to distort the valuation of property for purposes of subtitle B of the Internal Revenue Code of 1986, and

“(2) other methods using discretionary rights to distort the value of property for such purposes.

The Secretary shall, not later than December 31, 1992, report the results of such study, together with such legislative recommendations as the Secretary considers necessary, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.”

## § 2702. Special valuation rules in case of transfers of interests in trusts

### (a) Valuation rules

#### (1) In general

Solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in section 2701(e)(2)) shall be determined as provided in paragraph (2).

#### (2) Valuation of retained interests

##### (A) In general

The value of any retained interest which is not a qualified interest shall be treated as being zero.

##### (B) Valuation of qualified interest

The value of any retained interest which is a qualified interest shall be determined under section 7520.

### (3) Exceptions

#### (A) In general

This subsection shall not apply to any transfer—

- (i) if such transfer is an incomplete gift,
- (ii) if such transfer involves the transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust, or
- (iii) to the extent that regulations provide that such transfer is not inconsistent with the purposes of this section.

#### (B) Incomplete gift

For purposes of subparagraph (A), the term “incomplete gift” means any transfer which would not be treated as a gift whether or not consideration was received for such transfer.

### (b) Qualified interest

For purposes of this section, the term “qualified interest” means—

- (1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually,
- (2) any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and
- (3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in paragraph (1) or (2).

### (c) Certain property treated as held in trust

For purposes of this section—

#### (1) In general

The transfer of an interest in property with respect to which there is 1 or more term interests shall be treated as a transfer of an interest in a trust.

#### (2) Joint purchases

If 2 or more members of the same family acquire interests in any property described in paragraph (1) in the same transaction (or a se-

ries of related transactions), the person (or persons) acquiring the term interests in such property shall be treated as having acquired the entire property and then transferred to the other persons the interests acquired by such other persons in the transaction (or series of transactions). Such transfer shall be treated as made in exchange for the consideration (if any) provided by such other persons for the acquisition of their interests in such property.

#### (3) Term interest

The term “term interest” means—

- (A) a life interest in property, or
- (B) an interest in property for a term of years.

#### (4) Valuation rule for certain term interests

If the nonexercise of rights under a term interest in tangible property would not have a substantial effect on the valuation of the remainder interest in such property—

(A) subparagraph (A) of subsection (a)(2) shall not apply to such term interest, and

(B) the value of such term interest for purposes of applying subsection (a)(1) shall be the amount which the holder of the term interest establishes as the amount for which such interest could be sold to an unrelated third party.

### (d) Treatment of transfers of interests in portion of trust

In the case of a transfer of an income or remainder interest with respect to a specified portion of the property in a trust, only such portion shall be taken into account in applying this section to such transfer.

### (e) Member of the family

For purposes of this section, the term “member of the family” shall have the meaning given such term by section 2704(c)(2).

(Added Pub. L. 101-508, title XI, §11602(a), Nov. 5, 1990, 104 Stat. 1388-497; amended Pub. L. 104-188, title I, §1702(f)(11), Aug. 20, 1996, 110 Stat. 1872.)

#### AMENDMENTS

1996—Subsec. (a)(3)(A)(i). Pub. L. 104-188, §1702(f)(11)(A)(i), (ii), (B)(i), substituted “if” for “to the extent” and “incomplete gift” for “incomplete transfer”, and struck out “or” at end.

Subsec. (a)(3)(A)(ii). Pub. L. 104-188, §1702(f)(11)(A)(iii), substituted “, or” for period at end.

Subsec. (a)(3)(A)(iii). Pub. L. 104-188, §1702(f)(11)(A)(iv), added cl. (iii).

Subsec. (a)(3)(B). Pub. L. 104-188, §1702(f)(11)(B), substituted “incomplete gift” for “incomplete transfer” in heading and text.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

## § 2703. Certain rights and restrictions disregarded

### (a) General rule

For purposes of this subtitle, the value of any property shall be determined without regard to—

- (1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right), or
- (2) any restriction on the right to sell or use such property.

**(b) Exceptions**

Subsection (a) shall not apply to any option, agreement, right, or restriction which meets each of the following requirements:

- (1) It is a bona fide business arrangement.
- (2) It is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth.
- (3) Its terms are comparable to similar arrangements entered into by persons in an arms' length transaction.

(Added Pub. L. 101-508, title XI, § 11602(a), Nov. 5, 1990, 104 Stat. 1388-498.)

**§ 2704. Treatment of certain lapsing rights and restrictions**

**(a) Treatment of lapsed voting or liquidation rights**

**(1) In general**

For purposes of this subtitle, if—

(A) there is a lapse of any voting or liquidation right in a corporation or partnership, and

(B) the individual holding such right immediately before the lapse and members of such individual's family hold, both before and after the lapse, control of the entity,

such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate of the decedent, whichever is applicable, in the amount determined under paragraph (2).

**(2) Amount of transfer**

For purposes of paragraph (1), the amount determined under this paragraph is the excess (if any) of—

(A) the value of all interests in the entity held by the individual described in paragraph (1) immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing), over

(B) the value of such interests immediately after the lapse.

**(3) Similar rights**

The Secretary may by regulations apply this subsection to rights similar to voting and liquidation rights.

**(b) Certain restrictions on liquidation disregarded**

**(1) In general**

For purposes of this subtitle, if—

(A) there is a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family, and

(B) the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity,

any applicable restriction shall be disregarded in determining the value of the transferred interest.

**(2) Applicable restriction**

For purposes of this subsection, the term "applicable restriction" means any restriction—

(A) which effectively limits the ability of the corporation or partnership to liquidate, and

(B) with respect to which either of the following applies:

(i) The restriction lapses, in whole or in part, after the transfer referred to in paragraph (1).

(ii) The transferor or any member of the transferor's family, either alone or collectively, has the right after such transfer to remove, in whole or in part, the restriction.

**(3) Exceptions**

The term "applicable restriction" shall not include—

(A) any commercially reasonable restriction which arises as part of any financing by the corporation or partnership with a person who is not related to the transferor or transferee, or a member of the family of either, or

(B) any restriction imposed, or required to be imposed, by any Federal or State law.

**(4) Other restrictions**

The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.

**(c) Definitions and special rules**

For purposes of this section—

**(1) Control**

The term "control" has the meaning given such term by section 2701(b)(2).

**(2) Member of the family**

The term "member of the family" means, with respect to any individual—

(A) such individual's spouse,

(B) any ancestor or lineal descendant of such individual or such individual's spouse,

(C) any brother or sister of the individual, and

(D) any spouse of any individual described in subparagraph (B) or (C).

**(3) Attribution**

The rule of section 2701(e)(3) shall apply for purposes of determining the interests held by any individual.

(Added Pub. L. 101-508, title XI, § 11602(a), Nov. 5, 1990, 104 Stat. 1388-498; amended Pub. L. 104-188, title I, § 1702(f)(3)(C), Aug. 20, 1996, 110 Stat. 1871.)

AMENDMENTS

1996—Subsec. (c)(3). Pub. L. 104-188 substituted "section 2701(e)(3)" for "section 2701(e)(3)(A)".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the pro-

vision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

### Subtitle C—Employment Taxes

Chapter	Sec. <sup>1</sup>
21. Federal insurance contributions act .....	3101
22. Railroad retirement tax act .....	3201
23. Federal unemployment tax act .....	3301
23A. Railroad Unemployment Repayment Tax .....	3321
24. Collection of income tax at source on wages .....	3401
25. General provisions relating to employment taxes .....	3501

#### AMENDMENTS

1983—Pub. L. 98-76, title II, §231(c), Aug. 12, 1983, 97 Stat. 429, added item for chapter 23A.

Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Pub. L. 97-248, title III, §§307(b)(1), (6), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the heading of subtitle C is amended to read “Employment Taxes and Collection of Income Tax at Source”, the caption of chapter 24 is amended by striking out “On Wages”, and the caption of chapter 25 is amended by inserting “And Collection Of Income Taxes At Source” after “Employment Taxes”. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

### CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

Subchapter	Sec. <sup>1</sup>
A. Tax on employees .....	3101
B. Tax on employers .....	3111
C. General provisions .....	3121

#### Subchapter A—Tax on Employees

Sec.	
3101.	Rate of tax.
3102.	Deduction of tax from wages.

#### § 3101. Rate of tax

##### (a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

In cases of wages received during:	The rate shall be:
1984, 1985, 1986, or 1987 .....	5.7 percent
1988 or 1989 .....	6.06 percent
1990 or thereafter .....	6.2 percent.

##### (b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in

section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages received during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages received during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages received during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages received during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages received after December 31, 1985, the rate shall be 1.45 percent.

##### (c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement exclusively to the laws applicable to the social security system of such foreign country.

(Aug. 16, 1954, ch. 736, 68A Stat. 415; Sept. 1, 1954, ch. 1206, title II, §208(b), 68 Stat. 1094; Aug. 1, 1956, ch. 836, title II, §202(b), 70 Stat. 845; Pub. L. 85-840, title IV, §401(b), Aug. 28, 1958, 72 Stat. 1041; Pub. L. 87-64, title II, §201(b), June 30, 1961, 75 Stat. 141; Pub. L. 89-97, title I, §111(c)(5), title III, §321(b), July 30, 1965, 79 Stat. 342, 395; Pub. L. 90-248, title I, §109(a)(2), (b)(2), Jan. 2, 1968, 81 Stat. 836; Pub. L. 92-5, title II, §204(a)(1), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92-336, §204(a)(2), (b)(2), July 1, 1972, 86 Stat. 421, 422; Pub. L. 92-603, §135(a)(2), (b)(2), Oct. 30, 1972, 86 Stat. 1362, 1363; Pub. L. 93-233, §6(a)(1), (b)(2), Dec. 31, 1973, 87 Stat. 954, 955; Pub. L. 94-455, title XIX, §1903(a)(1), Oct. 4, 1976, 90 Stat. 1806; Pub. L. 95-216, title I, §101(a)(1), (b)(1), title III, §317(b)(2), Dec. 20, 1977, 91 Stat. 1510, 1511, 1540; Pub. L. 98-21, title I, §123(a)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 108-203, title IV, §415, Mar. 2, 2004, 118 Stat. 530.)

#### REFERENCES IN TEXT

Section 233 of the Social Security Act, referred to in subsec. (c), is classified to section 433 of Title 42, The Public Health and Welfare.

#### AMENDMENTS

2004—Subsec. (c). Pub. L. 108-203 substituted “exclusively to the laws applicable to” for “to taxes or contributions for similar purposes under”.

1983—Subsec. (a). Pub. L. 98-21 substituted table of rates for former pars. (1) to (7) which had imposed a tax on the income of every individual (1) with respect to wages received during the calendar years 1974 through 1977 at the rate of 4.95 percent; (2) with respect to wages received during the calendar year 1978 at the rate of 5.05 percent; (3) with respect to wages received during the calendar years 1979 and 1980 at the rate of 5.08 percent; (4) with respect to wages received during the calendar year 1981 at the rate of 5.35 percent; (5) with respect to wages received during the calendar years 1982 through 1984 at the rate of 5.40 percent; (6) with respect

<sup>1</sup> Section numbers editorially supplied.

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